APPENDIX

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APPENDIX A

ACTS OF CONGRESS

1

TITLE II OF NATIONAL INDUSTRIAL RECOVERY ACT (C. 90, 48 STAT. 200)

AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

TITLE II—PUBLIC WORKS AND CONSTRUCTION PROJECTS

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

SECTION 201. (a) To effectuate the purposes of this title, the President is hereby authorized to create a Federal Emergency Administration of Public Works, all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the "Administrator"), and to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary, to

prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed. The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint.

(b) The Administrator may, without regard to the civil service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of such experts and such other officers and employees as are necessary to carry out the provisions of this title; and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this title.

(c) All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

(d) After the expiration of two years after the date of the enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended, the President shall not make any further loans or grants or enter upon any new construction under this title, and any agencies established hereunder shall cease to exist and any of their remaining functions shall be transferred to such departments of the Government as the President shall designate: *Provided,* That he may issue funds to a borrower under this title prior to January 23, 1939, under the terms of any agreement, or any commitment to bid upon or

purchase bonds, entered into with such borrower prior to the date of termination, under this section, of the power of the President to make loans.

SEC. 202. The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: (a) Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, and construction of river and harbor improvement and flood control and also the construction of any river or drainage improvement required to perform or satisfy any obligation incurred by the United States through a treaty with a foreign Government heretofore ratified and to restore or develop for the use of any State or its citizens water taken from or denied to them by performance on the part of the United States of treaty obligations heretofore assumed: *Provided,* That no river or harbor improvements shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers of the United States Army; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than

those included in the foregoing classes) of any character heretofore eligible for loans under subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, and paragraph (3) of such subsection (a) shall for such purposes be held to include loans for the construction or completion of hospitals the operation of which is partly financed from public funds, and of reservoirs and pumping plants and for the construction of dry docks; and if in the opinion of the President it seems desirable, the construction of naval vessels within the terms and/or limits established by the London Naval Treaty of 1930 and of aircraft required therefor and construction of heavier-than-air aircraft and technical construction for the Army Air Corps and such Army housing projects as the President may approve, and provision of original equipment for the mechanization or motorization of such Army tactical units as he may designate: *Provided, however,* That in the event of an international agreement for the further limitation of armament, to which the United States is signatory, the President is hereby authorized and empowered to suspend, in whole or in part, any such naval or military construction or mechanization and motorization of Army units: *Provided further,* That this title shall not be applicable to public works under the jurisdiction or control of the Architect of the Capitol or of any commission or committee for which such Architect is the contracting and/or executive officer.

SEC. 203. (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is au-

thorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public-works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 percentum of the cost of the labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection with the construction of any such project, and to sell any security acquired or any property so constructed or acquired or to lease any such property with or without the privilege of purchase: *Provided,* That all moneys received from any such sale or lease or the repayment of any loan shall be used to retire obligations issued pursuant to section 209 of this Act, in addition to any other moneys required to be used for such purpose; (4) to aid in the financing of such railroad maintenance and equipment as may be approved by the Interstate Commerce Commission as desirable for the improvement of transportation facilities; and (5) to advance, upon request of the Commission having jurisdiction of the project, the unappropriated balance of the sum authorized for carrying out the provisions of the Act entitled "An Act to provide for the construction and equipment of an annex to the Library of Congress," approved June 13, 1930 (46 Stat. 583); such advance to be expended under the direction of such Commission

and in accordance with such Act: *Provided,* That in deciding to extend any aid or grant hereunder to any State, county, or municipality the President may consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. The provisions of this section and section 202 shall extend to public works in the several States, Hawaii, Alaska, the District of Columbia, Puerto Rico, the Canal Zone, and the Virgin Islands.

(b) All expenditures for authorized travel by officers and employees, including subsistence, required on account of any Federal public-works projects, shall be charged to the amounts allocated to such projects, notwithstanding any other provisions of law; and there is authorized to be employed such personal services in the District of Columbia and elsewhere as may be required to be engaged upon such work and to be in addition to employees otherwise provided for, the compensation of such additional personal services to be a charge against the funds made available for such construction work.

(c) In the acquisition of any land or site for the purposes of Federal public buildings and in the construction of such buildings provided for in this title, the provisions contained in sections 305 and 306 of the Emergency Relief and Construction Act of 1932, as amended, shall apply.

(d) The President, in his discretion, and under such terms as he may prescribe, may extend any of the benefits of this title to any State, county, or municipality, notwithstanding any constitutional or legal restriction or limitation on the right or power

of such State, county, or municipality to borrow money or incur indebtedness.

SEC. 204. (a) For the purpose of providing for emergency construction of public highways and related projects, the President is authorized to make grants to the highway departments of the several States in an amount not less than $400,000,000, to be expended by such departments in accordance with the provisions of the Federal Highway Act, approved November 9, 1921, as amended and supplemented, except as provided in this title, as follows:

(1) For expenditure in emergency construction on the Federal aid highway system and extensions thereof into and through municipalities. The amount apportioned to any State under this paragraph may be used to pay all or any part of the cost of surveys, plans, and of highway and bridge construction, including the elimination of hazards to highway traffic, such as the separation of grades at crossing, the reconstruction of existing railroad grade crossing structures, the relocation of highways to eliminate railroad crossings, the widening of narrow bridges and roadways, the building of footpaths, the replacement of unsafe bridges, the construction of routes to avoid congested areas, the construction of facilities to improve accessibility and the free flow of traffic, and the cost of any other construction that will provide safer traffic facilities or definitely eliminate existing hazards to pedestrian or vehicular traffic. No funds made available by this title shall be used for the acquisition of any land, right of way, or easement in connection with any railroad grade elimination project.

(2) For expenditure in emergency construction on secondary or feeder roads to be agreed upon by the State highway departments and the Secretary of Agriculture: *Provided,* That the State or responsible political subdivision shall provide for the proper maintenance of said roads. Such grants shall be available for payment of the full cost of surveys, plans, improvement, and construction of secondary or feeder roads, on which projects shall be submitted by the State highway department and approved by the Secretary of Agriculture.

(b) Any amounts allocated by the President for grants under subsection (a) of this section shall be apportioned among the several States seven-eighths in accordance with the provisions of section 21 of the Federal Highway Act, approved November 9, 1921, as amended and supplemented (which Act is hereby further amended for the purposes of this title to include the District of Columbia), and one-eighth in the ratio which the population of each State bears to the total population of the United States, according to the latest decennial census and shall be available on July 1, 1933, and shall remain available until expended; but no part of the funds apportioned to any State need be matched by the State, and such funds may also be used in lieu of State funds to match unobligated balances of previous apportionments of regular Federal-aid appropriations.

(c) All contracts involving the expenditure of such grants shall contain provisions establishing minimum rates of wages, to be predetermined by the State highway department, which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for

bids and shall be included in proposals for bids for the work.

(d) In the expenditure of such amounts, the limitations in the Federal Highway Act, approved November 9, 1921, as amended and supplemented, upon highway construction, reconstruction, and bridges within municipalities and upon payments per mile which may be made from Federal funds, shall not apply.

(e) As used in this section the term "State" includes the Territory of Hawaii and the District of Columbia. The term "highway" as defined in the Federal Highway Act approved November 9, 1921, as amended and supplemented, for the purposes of this section, shall be deemed to include such main parkways as may be designated by the State and approved by the Secretary of Agriculture as part of the Federal-aid highway system.

(f) Whenever, in connection with the construction of any highway project under this section or section 202 of this Act, it is necessary to acquire rights of way over or through any property or tracts of land owned and controlled by the Government of the United States, it shall be the duty of the proper official of the Government of the United States having control of such property or tracts of land with the approval of the President and the Attorney General of the United States, and without any expense whatsoever to the United States, to perform any acts and to execute any agreements necessary to grant the rights of way so required, but if at any time the land or the property the subject of the agreement shall cease to be used for the purposes of the highway, the title in and the jurisdiction over the land or property

shall automatically revert to the Government of the United States and the agreement shall so provide.

(g) Hereafter in the administration of the Federal Highway Act, and Acts amendatory thereof or supplementary thereto, the first paragraph of section 9 of said Act shall not apply to publicly owned toll bridges or approaches thereto, operated by the highway department of any State, subject, however, to the condition that all tolls received from the operation of any such bridge, less the actual cost of operation and maintenance, shall be applied to the repayment of the cost of its construction or acquisition, and when the cost of its construction or acquisition shall have been repaid in full, such bridge thereafter shall be maintained and operated as a free bridge.

SEC. 205. (a) Not less than $50,000,000 of the amount made available by this Act shall be allotted for (A) national forest highways, (B) national forest roads, trails, bridges, and related projects, (C) national park roads and trails in national parks owned or authorized, (D) roads on Indian reservations, and (E) roads through public lands, to be expended in the same manner as provided in paragraph (2) of section 301 of the Emergency Relief and Construction Act of 1932, in the case of appropriations allocated for such purposes, respectively, in such section 301, to remain available until expended.

(b) The President may also allot funds made available by this Act for the construction, repair, and improvement of public highways in Alaska, the Canal Zone, Puerto Rico, and the Virgin Islands.

SEC. 206. All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed on any such project; (2) that (except in executive, administrative, and supervisory positions), so far as practicable and feasible, no individual directly employed on any such project shall be permitted to work more than thirty hours in any one week; (3) that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort; (4) that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (A) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the political subdivision and/or county in which the work is to be performed, and (B) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or district in which the work is to be performed: *Provided*, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates; and (5) that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage.

SEC. 207. (a) For the purpose of expediting the actual construction of public works contemplated by this title and to provide a means of financial

assistance to persons under contract with the United States to perform such construction, the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, to approve any assignment executed by any such contractor, with the written consent of the surety or sureties upon the penal bond executed in connection with his contract, to any national or State bank, or his claim against the United States, or any part of such claim, under such contract; and any assignment so approved shall be valid for all purposes, notwithstanding the provisions of sections 3737 and 3477 of the Revised Statutes, as amended.

(b) The funds received by a contractor under any advances made in consideration of any such assignment are hereby declared to be trust funds in the hands of such contractor to be first applied to the payment of claims of subcontractors, architects, engineers, surveyors, laborers, and material men in connection with the project, to the payment of premiums on the penal bond or bonds, and premiums accruing during the construction of such project on insurance policies taken in connection therewith. Any contractor and any officer, director, or agent of any such contractor, who applies, or consents to the application of, such funds for any other purpose and fails to pay any claim or premium hereinbefore mentioned, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(c) Nothing in this section shall be considered as imposing upon the assignee any obligation to

see to the proper application of the funds advanced by the assignee in consideration of such assignment.

SUBSISTENCE HOMESTEADS

SEC. 208. To provide for aiding the redistribution of the overbalance of population in industrial centers $25,000,000 is hereby made available to the President, to be used by him through such agencies as he may establish and under such regulations as he may make, for making loans for and otherwise aiding in the purchase of subsistence homesteads. The moneys collected as repayment of said loans shall constitute a revolving fund to be administered as directed by the President for the purposes of this section.

RULES AND REGULATIONS

SEC. 209. The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500 or imprisonment not to exceed six months, or both.

ISSUE OF SECURITIES AND SINKING FUND

SEC. 210. (a) The Secretary of the Treasury is authorized to borrow, from time to time, under the Second Liberty Bond Act, as amended, such amounts as may be necessary to meet the expenditures authorized by this Act, or to refund any obligations previously issued under this section, and to issue therefor bonds, notes, certificates of indebtedness, or Treasury bills of the United States.

(b) For each fiscal year beginning with the fiscal year 1934 there is hereby appropriated, in addition

to and as part of, the cumulative sinking fund provided by section 6 of the Victory Liberty Loan Act, as amended, out of any money in the Treasury not otherwise appropriated, for the purpose of such fund, an amount equal to 2½ per centum of the aggregate amount of the expenditures made out of appropriations made or authorized under this Act as determined by the Secretary of the Treasury.

REEMPLOYMENT AND RELIEF TAXES

SEC. 211. (a) Effective as of the day following the date of the enactment of this Act, section 617 (a) of the Revenue Act of 1932 is amended by striking out "1 cent" and inserting in lieu thereof "1½ cents."

(b) Effective as of the day following the date of the enactment of this Act, section 617 (c) (2) of such Act is amended by adding at the end thereof a new sentence to read as follows: "As used in this paragraph the term 'benzol' does not include benzol sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel."

SEC. 212. Titles IV and V of the Revenue Act of 1932 are amended by striking out "1934" wherever appearing therein and by inserting in lieu thereof "1935". Section 761 of the Revenue Act of 1932 is further amended by striking out "and on July 1, 1933" and inserting in lieu thereof "and on July 1, 1933, and on July 1, 1934,".

SEC. 213. (a) There is hereby imposed upon the receipt of dividends (required to be included in

the gross income of the recipient under the provisions of the Revenue Act of 1932) by any person other than a domestic corporation, an excise tax equal to 5 per centum of the amount thereof, such tax to be deducted and withheld from such dividends by the payor corporation. The tax imposed by this section shall not apply to dividends declared before the date of the enactment of this Act.

(b) Every corporation required to deduct and withhold any tax under this section shall, on or before the last day of the month following the payment of the dividend, make return thereof and pay the tax to the collector of the district in which its principal place of business is located, or, if it has no principal place of business in the United States, to the collector at Baltimore, Maryland.

(c) Every such corporation is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payment made in accordance with the provisions of this section.

(d) The provisions of sections 115, 771 to 774, inclusive, and 1111 of the Revenue Act of 1932 shall be applicable with respect to the tax imposed by this section.

(e) The taxes imposed by this section shall not apply to the dividends of any corporation enumerated in section 103 of the Revenue Act of 1932.

SEC. 214. Section 104 of the Revenue Act of 1932 is amended by striking out the words "the surtax" wherever occurring in such section and inserting in lieu thereof "any internal-revenue tax." The heading of such section is amended by striking out "surtaxes" and inserting in lieu thereof "internal-

revenue taxes." Secton 13 (c) of such Act is amended by striking out "surtax" and inserting in lieu thereof "internal-revenue tax."

SEC. 215. (a) For each year ending June 30 there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1 for each $1,000 of the adjusted declared value of its capital stock.

(b) For each year ending June 30 there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to $1 for each $1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(c) The taxes imposed by this section shall not apply—

(1) to any corporation enumerated in section 103 of the Revenue Act of 1932;

(2) to any insurance company subject to the tax imposed by section 201 or 204 of such Act;

(3) to any domestic corporation in respect of the year ending June 30, 1933, if it did not carry on or do business during a part of the period from the date of the enactment of this Act to June 30, 1933, both dates inclusive; or

(4) to any foreign corporation in respect of the year ending June 30, 1933, if it did not carry on or do business in the United States during a part of the period from the date of the enactment of this Act to June 30, 1933, both dates inclusive.

(d) Every corporation liable for tax under this section shall make a return under oath within one

month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, in so far as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under title II of the Revenue Act of 1926.

(f) For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be

the value, as declared by the corporation in its first return under this section (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section (or as of the date of organization in the case of a corporation having no income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section). For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value plus (1) the cash and fair market value of property paid in for stock or shares, (2) paid-in surplus and contributions to capital, and (3) earnings and profits, and minus (A) the value of property distributed in liquidation to shareholders, (B) distributions of earnings and profits, and (C) deficits, whether operating or nonoperating; each adjustment being made for the period from the date as of which the original declared value was declared to the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section. For any subsequent year ending June 30, the adjusted declared value in the case of a foreign corporation shall be the original declared value adjusted, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, to reflect increases or decreases (for the period specified in the preceding sentence) in the capital employed in the transaction of its business in the United States.

(g) The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.

SEC. 216. (a) There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 215, an excess-profits tax equivalent to 5 per centum of such portion of its net income for such income-tax taxable year as is in excess of 12½ per centum of the adjusted declared value of its capital stock (or in the case of a foreign corporation the adjusted declared value of capital employed in the transaction of its business in the United States) as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year) determined as provided in section 215. The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.

(b) The tax imposed by this section shall be assessed, collected, and paid in the same manner, and shall be subject to the same provisions of law (including penalties) as the taxes imposed by title I of the Revenue Act of 1932.

SEC. 217. (a) The President shall proclaim the date of—

(1) the close of the first fiscal year ending June 30 of any year after the year 1933, during which the total receipts of the United States (excluding public-debt receipts) exceed its total expenditures (excluding public-debt expenditures other than those chargeable against such receipts), or

(2) the repeal of the eighteenth amendment to the Constitution,

whichever is the earlier.

(b) Effective as of the 1st day of the calendar year following the date so proclaimed section

617 (a) of the Revenue Act of 1932, as amended is amended by striking out "1½ cents" and inserting in lieu thereof "1 cent."

(c) The tax on dividends imposed by section 213 shall not apply to any dividends declared on or after the 1st day of the calendar year following the date so proclaimed.

(d) The capital-stock tax imposed by section 215 shall not apply to any taxpayer in respect of any year beginning on or after the 1st day of July following the date so proclaimed.

(e) The excess-profits tax imposed by section 216 shall not apply to any taxpayer in respect of any taxable year after its taxable year during which the date so proclaimed occurs.

SEC. 218. (a) Effective as of January 1, 1933, sections 117, 23 (i), 169, 187, and 205 of the Revenue Act of 1932 are repealed.

(b) Effective as of January 1, 1933, section 23 (r) (2) of the Revenue Act of 1932 is repealed.

(c) Effective as of January 1, 1933, section 23 (r) (3) of the Revenue Act of 1932 is amended by striking out all after the word "Territory" and inserting a period.

(d) Effective as of January 1, 1933, section 182 (a) of the Revenue Act of 1932 is amended by inserting at the end thereof a new sentence as follows: "No part of any loss disallowed to a partnership as a deduction by section 23 (r) shall be allowed as a deduction to a member of such partnership in computing net income."

(e) Effective as of January 1, 1933, section 141 (c) of the Revenue Act of 1932 is amended by striking out "except that for the taxable years 1932 and 1933 there shall be added to the rate of tax pre-

scribed by sections 13 (a), 201 (b), and 204 (a), a rate of three fourths of 1 per centum" and inserting in lieu thereof the following: "except that for the taxable years 1932 and 1933 there shall be added to the rate of tax prescribed by sections 13 (a), 201 (b), and 204 (a) a rate of three fourths of 1 per centum and except that for the taxable years 1934 and 1935 there shall be added to the rate of tax prescribed by sections 13 (a), 201 (b), and 204 (a) a rate of 1 per centum."

(f) No interest shall be assessed or collected for any period prior to September 15, 1933, upon such portion of any amount determined as a deficiency in income taxes as is attributable solely to the amendments made to the Revenue Act of 1932 by this section.

(g) In cases where the effect of this section is to require for a taxable year ending prior to June 30, 1933, the making of an income-tax return not otherwise required by law, the time for making the return and paying the tax shall be the same as if the return was for a fiscal year ending June 30, 1933.

(h) Section 55 of the Revenue Act of 1932 is amended by inserting before the period at the end thereof a semicolon and the following: "and all returns made under this Act after the date of enactment of the National Industrial Recovery Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President."

SEC. 219. Section 500 (a) (1) of the Revenue Act of 1926, as amended, is amended by striking out the period at the end of the second sentence thereof and inserting in lieu thereof a comma and

the following: "except that no tax shall be imposed in the case of persons admitted free to any spoken play (not a mechanical reproduction), whether or not set to music or with musical parts or accompaniments, which is a consecutive narrative interpreted by a single set of characters, all necessary to the development of the plot, in two or more acts, the performance consuming more than 1 hour and 45 minutes of time."

APPROPRIATION

SEC. 220. For the purposes of this Act, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $3,300,000,000. The President is authorized to allocate so much of said sum, not in excess of $100,000,000, as he may determine to be necessary for expenditures in carrying out the Agricultural Adjustment Act and the purposes, powers, and functions heretofore and hereafter conferred upon the Farm Credit Administration.

SEC. 221. Section 7 of the Agricultural Adjustment Act, approved May 12, 1933, is amended by striking out all of its present terms and provisions and substituting therefor the following:

"SEC. 7. The Secretary shall sell the cotton held by him at his discretion, but subject to the foregoing provisions: *Provided,* That he shall dispose of all cotton held by him by March 1, 1936: *Provided further,* That notwithstanding the provisions of section 6, the Secretary shall have authority to enter into option contracts with producers of cotton to sell to the producers such cotton held by him, in such amounts and at such prices and upon such terms and conditions as the Secretary may deem advisable, in combination with rental or

benefit payments provided for in part 2 of this title.

"Notwithstanding any provisions of existing law, the Secretary of Agriculture may in the administration of the Agricultural Adjustment Act make public such information as he deems necessary in order to effectuate the purposes of such Act."

TITLE III—AMENDMENTS TO EMERGENCY RELIEF AND CONSTRUCTION ACT AND MISCELLANEOUS PROVISIONS

SECTION 301. After the expiration of ten days after the date upon which the Administrator has qualified and taken office, (1) no application shall be approved by the Reconstruction Finance Corporation under the provisions of subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, and (2) the Administrator shall have access to all applications, files, and records of the Reconstruction Finance Corporation; may issue funds to a borrower under such administration of funds over such subsection: *Provided,* That the Reconstruction Finance Corporation may issue funds to a borrower under such subsection (a) prior to January 23, 1939, under the terms of any agreement or any commitment to bid upon or purchase bonds entered into with such borrower pursuant to an application approved prior to the date of termination, under this section, of the power of the Reconstruction Finance Corporation to approve applications.

DECREASE OF BORROWING POWER OF RECONSTRUCTION FINANCE CORPORATION

SEC. 302. The amount of notes, debentures, bonds, or other such obligations which the Recon-

struction Finance Corporation is authorized and empowered under section 9 of the Reconstruction Finance Corporation Act, as amended, to have outstanding at any one time is decreased by $400,000,000.

SEPARABILITY CLAUSE

SEC. 303. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 304. This Act may be cited as the "National Industrial Recovery Act."

Approved, June 16, 1933, 11:55 a. m.

2

EMERGENCY APPROPRIATION ACT, FISCAL YEAR 1935
(c. 648, 48 STAT. 1021, 1055)

AN ACT Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1934, and prior fiscal years, to provide supplemental general and emergency appropriations for the fiscal years ending June 30, 1934, and June 30, 1935, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1934, and prior fiscal years, to provide supplemental general and emergency appropriations for the fiscal years ending June 30, 1934, and June 30, 1935, and for other purposes, namely:

* * * * *

TITLE II—EMERGENCY APPROPRIATIONS

EXECUTIVE

For an additional amount for carrying out the purposes of the Act entitled "An Act for the relief of unemployment through the performance of useful public work, and for other purposes," approved March 31, 1933 (48 Stat. 22); the Federal Emergency Relief Act of 1933, approved May 12, 1933 (48 Stat. 55); the Tennessee Valley Authority Act of 1933, approved May 18, 1933 (48 Stat. 58); and the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195); and including $325,000 for an addition to the Executive Office Building and for the furnishings and equipment thereof; $899,675,000, to be allocated by the President for further carrying out the purposes of the aforesaid Acts and to remain available until June 30, 1935: *Provided,* That not exceeding $500,000,000 in the aggregate of any savings or unobligated balances in funds of the Reconstruction Finance Corporation may, in the discretion of the President, be transferred and applied to the purposes of the Federal Emergency Relief Act of 1933 and/or title II of the National Industrial Recovery Act, and any unobligated balances in appropriations (including allocations of appropriations) of the Federal Emergency Administration of Public Works may, in the discretion of the President, be transferred and applied to the purposes of such Federal Emergency Relief Act of 1933: *Provided further,* That the amounts to be made available under the authority of this paragraph for public works under the National Industrial Recovery Act shall not exceed in the aggregate $500,000,000.

EMERGENCY RELIEF

* * * * *

The Reconstruction Finance Corporation is hereby authorized to purchase marketable securities, satisfactory to said Corporation, acquired or to be acquired by the Federal Emergency Administration of Public Works, and any sums paid for such securities shall be available to said Federal Emergency Administration of Public Works for the making of additional loans (but not grants) under the provisions of title II of the National Industrial Recovery Act: *Provided,* That the amount that the Reconstruction Finance Corporation may have invested at any one time in such securities shall not exceed $250,000,000. The amount of notes, debentures, and bonds or other such obligations which the Reconstruction Finance Corporation is authorized and empowered to have outstanding at any one time pursuant to section 9 of the Reconstruction Finance Corporation Act, as amended, is hereby increased by the sums necessary for these purchases, not to exceed $250,000,000.

3

EMERGENCY RELIEF APPROPRIATION ACT OF 1935
(C. 48, 49 STAT. 115, 119)

JOINT RESOLUTION Making appropriations for relief purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to provide relief, work relief and to increase employment by providing for useful projects, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be used in the discretion and

under the direction of the President, to be immediately available and to remain available until June 30, 1937, the sum of $4,000,000,000, together with the separate funds established for particular areas by proclamation of the President pursuant to section 15 (f) of the Agricultural Adjustment Act (but any amounts thereof shall be available for use only for the area for which the fund was established); not exceeding $500,000,000 in the aggregate of any savings or unexpended balances in funds of the Reconstruction Finance Corporation; and not exceeding a total of $380,000,000 of such unexpended balances as the President may determine are not required for the purposes for which authorized, of the following appropriations, namely: The appropriation of $3,300,000,000 for national industrial recovery contained in the Fourth Deficiency Act, fiscal year 1933, approved June 16, 1933 (48 Stat. 274); the appropriation of $950,000,000 for emergency relief and civil works contained in the Act approved February 15, 1934 (48 Stat. 351); the appropriation of $899,675,000 for emergency relief and public works, and the appropriation of $525,000,000 to meet the emergency and necessity for relief in stricken agricultural areas, contained in the Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934 (48 Stat. 1055); and any remainder of the unobligated moneys referred to in section 4 of the Act approved March 31, 1933 (48 Stat. 22): *Provided,* That except as to such part of the appropriation made herein as the President may deem necessary for continuing relief as authorized under the Federal Emergency Relief Act of 1933, as amended, or for restoring to the Federal Emergency Administra-

tion of Public Works any sums which after December 28, 1934, were, by order of the President impounded or transferred to the Federal Emergency Relief Administration from appropriations heretofore made available to such Federal Emergency Administration of Public Works (which restoration is hereby authorized), this appropriation shall be available for the following classes of projects, and the amounts to be used for each class shall not, except as hereinafter provided, exceed the respective amounts stated, namely: (a) Highways, roads, streets, and grade-crossing elimination, $800,000,000; (b) rural rehabilitation and relief in stricken agricultural areas, and water conservation, trans-mountain water diversion and irrigation and reclamation, $500,000,000; (c) rural electrification, $100,000,000; (d) housing, $450,000,000; (e) assistance for educational, professional and clerical persons, $300,000,000; (f) Civilian Conservation Corps, $600,000,000; *(g) loans or grants, or both, for projects of States, Territories, Possessions, including subdivisions and agencies thereof, municipalities, and the District of Columbia, and self-liquidating projects of public bodies thereof, where, in the determination of the President, not less than twenty-five per centum of the loan or the grant, or the aggregate thereof, is to be expended for work under each particular project, $900,000,000;* (h) sanitation, prevention of soil erosion, prevention of stream pollution, sea coast erosion, reforestation, forestation, flood control, rivers and harbors and miscellaneous projects, $350,000,000: *Provided further,* That not to exceed 20 per centum of the amount herein appropriated may be used by the President to increase any one or

more of the foregoing limitations if he finds it necessary to do so in order to effectuate the purpose of this joint resolution: *Provided further,* That no part of the appropriation made by this joint resolution shall be expended for munitions, warships, or military or naval matériel; but this proviso shall not be construed to prevent the use of such appropriation for new buildings, reconstruction of buildings and other improvements in military or naval reservations, posts, forts, camps, cemeteries, or fortified areas, or for projects for nonmilitary or nonnaval purposes in such places.

Except as hereinafter provided, all sums allocated from the appropriation made herein for the construction of public highways and other related projects (except within or adjacent to national forests, national parks, national parkways, or other Federal reservations) shall be apportioned by the Secretary of Agriculture in the manner provided by section 204 (b) of the National Industrial Recovery Act for expenditure by the State highway departments under the provisions of the Federal Highway Act of November 9, 1921, as amended and supplemented, and subject to the provisions of section 1 of the Act of June 18, 1934 (48 Stat. 993): *Provided,* That any amounts allocated from the appropriation made herein for the elimination of existing hazards to life at railroad grade crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, shall be apportioned by the Secretary of Agriculture to the several States (including the Territory of Hawaii and the District of Colum-

bia), one-half on population as shown by the latest decennial census, one-fourth on the mileage of the Federal-aid highway system as determined by the Secretary of Agriculture, and one-fourth on the railroad mileage as determined by the Interstate Commerce Commission, to be expended by the State highway departments under the provisions of the Federal Highway Act of November 9, 1921, as amended and supplemented, and subject to the provisions of section 1 of such Act of June 18, 1934 (48 Stat. 993); but no part of the funds apportioned to any State or Territory under this joint resolution for public highways and grade crossings need be matched by the State or Territory: *And provided further,* That the President may also allot funds made available by this joint resolution for the construction, repair, and improvement of public highways in Alaska, Puerto Rico, and the Virgin Islands, and money allocated under this joint resolution to relief agencies may be expended by such agencies for the construction and improvement of roads and streets: *Provided, however,* That the expenditure of funds from the appropriation made herein for the construction of public highways and other related projects shall be subject to such rules and regulations as the President may prescribe for carrying out this paragraph and preference in the employment of labor shall be given (except in executive, administrative, supervisory, and highly skilled positions) to persons receiving relief, where they are qualified, and the President is hereby authorized to predetermine for each State the hours of work and the rates of wages to be paid to skilled, intermediate, and unskilled

labor engaged in such construction therein: *Provided further,* That rivers and harbors projects, reclamation projects (except the drilling of wells, development of springs and subsurface waters), and public buildings projects undertaken pursuant to the provisions of this joint resolution shall be carried out under the direction of the respective permanent Government departments or agencies now having jurisdiction of similar projects.

Funds made available by this joint resolution may be used, in the discretion of the President, for the purpose of making loans to finance, in whole or in part, the purchase of farm lands and necessary equipment by farmers, farm tenants, croppers, or farm laborers. Such loans shall be made on such terms as the President shall prescribe and shall be repaid in equal annual installments, or in such other manner as the President may determine.

Funds made available by this joint resolution may be used, in the discretion of the President for the administration of the Agricultural Adjustment Act, as amended, during the period of twelve months after the effective date of this joint resolution.

SEC. 2. The appropriation made herein shall be available for use only in the United States and its Territories and possessions. The provisions of the Act of February 15, 1934 (48 Stat. 351), relating to disability or death compensation and benefits shall apply to those persons receiving from the appropriation made herein, for services rendered as employees of the United States, security payments in accordance with schedules established by

the President: *Provided,* That so much of the sum herein appropriated as the United States Employees' Compensation Commission, with the approval of the President, estimates and certifies to the Secretary of the Treasury will be necessary for the payment of such compensation and administrative expenses shall be set aside in a special fund to be administered by the Commission for such purposes; and after June 30, 1936, such special fund shall be available for these purposes annually in such amounts as may be specified therefor in the annual appropriation Acts. The provisions of section 3709 of the Revised Statutes (U. S. C., title 41, sec. 5) shall not apply to any purchase made or service procured in carrying out the provisions of this joint resolution when the aggregate amount involved is less than $300.

SEC. 3. In carrying out the provisions of this joint resolution the President may (a) authorize expenditures for contract stenographic reporting services; supplies and equipment; purchase and exchange of law books, books of reference, directories, periodicals, newspapers and press clippings; travel expenses, including the expense of attendance at meetings when specifically authorized; rental at the seat of government and elsewhere; purchase, operation, and maintenance of motor-propelled passenger-carrying vehicles; printing and binding; and such other expenses as he may determine necessary to the accomplishment of the objectives of this joint resolution; and (b) accept and utilize such voluntary and uncompensated services, appoint, without regard to the provisions of the civil-service laws, such officers

and employees, and utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as may be necessary, prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, fix the compensation of any officers and employees so appointed.

Any Administrator or other officer, or the members of any central board, or other agency, named to have general supervision at the seat of Government over the program and work contemplated under the appropriation made in section 1 of this joint resolution and receiving a salary of $5,000 or more per annum from such appropriation, and any State or regional administrator receiving a salary of $5,000 or more per annum from such appropriation (except persons now serving as such under other law), shall be appointed by the President, by and with the advice and consent of the Senate: *Provided,* That the provisions of section 1761 of the Revised Statutes shall not apply to any such appointee and the salary of any person so appointed shall not be increased for a period of six months after confirmation.

SEC. 4. In carrying out the provisions of this joint resolution the President is authorized to establish and prescribe the duties and functions of necessary agencies within the Government.

SEC. 5. In carrying out the provisions of this joint resolution the President is authorized (within the limits of the appropriation made in section 1) to acquire, by purchase or by the power of eminent domain, any real property or any in-

terest therein, and improve, develop, grant, sell, lease (with or without the privilege of purchasing), or otherwise dispose of any such property or interest therein.

SEC. 6. The President is authorized to prescribe such rules and regulations as may be necessary to carry out this joint resolution, and any willful violation of any such rule or regulation shall be punishable by fine of not to exceed $1,000.

SEC. 7. The President shall require to be paid such rates of pay for all persons engaged upon any project financed in whole or in part, through loans or otherwise, by funds appropriated by this joint resolution, as will in the discretion of the President accomplish the purposes of this joint resolution, and not affect adversely or otherwise tend to decrease the going rates of wages paid for work of a similar nature.

The President may fix different rates of wages for various types of work on any project, which rates need not be uniform throughout the United States: *Provided, however,* That whenever permanent buildings for the use of any department of the Government of the United States, or the District of Columbia, are to be constructed by funds appropriated by this joint resolution, the provisions of the Act of March 3, 1931 (U. S. C., Supp. VII, title 40, sec. 276a), shall apply but the rates of wages shall be determined in advance of any bidding thereon.

SEC. 8. Whenever practicable in the carrying out of the provisions of this joint resolution, full ad-

vantage shall be taken of the facilities of private enterprise.

SEC. 9. Any person who knowingly and with intent to defraud the United States makes any false statement in connection with any application for any project, employment, or relief aid under the provisions of this joint resolution, or diverts, or attempts to divert, or assists in diverting for the benefit of any person or persons not entitled thereto, any moneys appropriated by this joint resolution, or any services or real or personal property acquired thereunder, or who knowingly, by means of any fraud, force, threat, intimidation, or boycott, deprives any person of any of the benefits to which he may be entitled under the provisions of this joint resolution, or attempts so to do, or assists in so doing, shall be deemed guilty of a misdemeanor and shall be fined not more than $2,000 or imprisoned not more than one year, or both.

SEC. 10. Until June 30, 1936, or such earlier date as the President by proclamation may fix, the Federal Emergency Relief Act of 1933, as amended, is continued in full force and effect.

SEC. 11. No part of the funds herein appropriated shall be expended for the administrative expenses of any department, bureau, board, commission, or independent agency of the Government if such administrative expenses are ordinarily financed from annual appropriations, unless additional work is imposed thereupon by reason of this joint resolution.

Sec. 12. The Federal Emergency Administration of Public Works established under title II of the

National Industrial Recovery Act is hereby continued until June 30, 1937, and is authorized to perform such of its functions under said Act and such functions under this joint resolution as may be authorized by the President. All sums appropriated to carry out the purposes of said Act shall be available until June 30, 1937. The President is authorized to sell any securities acquired under said Act or under this joint resolution, and all moneys realized from such sales shall be available to the President, in addition to the sums heretofore appropriated under this joint resolution, for the making of further loans under said Act or under this joint resolution.

SEC. 13. (a) The acquisition of articles, materials, and supplies for the public use, with funds appropriated by this joint resolution, shall be subject to the provisions of section 2 of title III of the Treasury and Post Office Appropriation Act, fiscal year 1934; and all contracts let pursuant to the provisions of this joint resolution shall be subject to the provisions of section 3 of title III of such Act.

(b) Any allocation, grant, or other distribution of funds for any project, Federal or non-Federal, from the appropriation made by this joint resolution, shall contain stipulations which will provide for the application of title III of such Act to the acquisition of articles, materials, and supplies for use in carrying out such project.

SEC. 14. The authority of the President under the provisions of the Act entitled "An Act for the relief of unemployment through the performance

of useful public work, and for other purposes", approved March 31, 1933, as amended, is hereby continued to and including March 31, 1937.

SEC. 15. A report of the operations under this joint resolution shall be submitted to Congress before the 10th day of January in each of the next three regular sessions of Congress, which report shall include a statement of the expenditures made and obligations incurred, by classes and amounts.

SEC. 16. This joint resolution may be cited as the "Emergency Relief Appropriation Act of 1935."

Approved, April 8, 1935, 4 p. m.

4

FIRST DEFICIENCY APPROPRIATION ACT, FISCAL YEAR 1936 (C. 689, 49 STAT. 1597, 1608, 1609)

AN ACT Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1936, and prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1936, and June 30, 1937, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1936, and prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1936, and June 30, 1937, and for other purposes, namely:

* * * * *

TITLE II—RELIEF AND WORK RELIEF

* * * * *

In order to increase employment by providing for useful public works projects of the kind and character for which the Federal Emergency Administrator of Public Works (hereinafter called the Administrator) has heretofore made loans or grants pursuant to Title II of the National Industrial Recovery Act or the Emergency Relief Appropriation Act of 1935, the Administrator may, upon the direction of the President, use not to exceed $300,000,000 from funds on hand or to be received from the sale of securities, for the making of grants, to aid in the financing of such projects: *Provided,* That no part of the sum made available by this paragraph shall be granted for any project unless, in the determination of the Administrator, the completion thereof can be substantially accomplished prior to July 1, 1938, and adequate provision has been made or is assured for financing such part of the entire cost thereof as is not to be supplied through the Federal Emergency Administration of Public Works: *Provided further,* That this limitation upon time shall not apply to any project enjoined in any Federal or State court: *Provided further,* That in no case shall the amount of the grant exceed forty-five per centum of the cost of the project. Nothing herein shall be construed to increase the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized and empowered under existing law to issue and to have outstanding at any one time, and nothing herein shall be construed to limit or curtail in any way any powers

which the Federal Emergency Administration of Public Works or the Administrator is now authorized to exercise.

5

PUBLIC WORKS ADMINISTRATION EXTENSION ACT OF 1937 (PUBLIC RESOLUTION NO. 47, 75TH CONG.)

JOINT RESOLUTION Making appropriations for relief purposes

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

TITLE II

SEC. 201. The Federal Emergency Administration of Public Works (herein called the "Administration") is hereby continued until July 1, 1939, and until such date is hereby authorized to continue to perform all functions which it is authorized to perform on June 29, 1937. All provisions of law existing on June 29, 1937, and relating to the availability of funds for carrying out any of the functions of such Administration are hereby continued until July 1, 1939, except that the date specified in the Emergency Relief Appropriation Act of 1936, prior to which, in the determination of the Federal Emergency Administrator of Public Works (herein called the "Administrator"), a project can be substantially completed is hereby changed from "July 1, 1938" to "July 1, 1939."

SEC. 202. The amount which the Reconstruction Finance Corporation is authorized by existing law to have invested at any one time in securities purchased from the Administration is hereby increased from $250,000,000 to $400,000,000.

SEC. 203. The amount of funds which the Administrator, upon direction of the President, is authorized to use for grants from moneys realized from the sale of securities is hereby increased from $300,000,000 to $359,000,000; and after the date of the enactment of this joint resolution no allotment shall be made by the Administrator for any project the application for which has not been approved by the examining divisions of the Administration prior to such date.

SEC. 204. The paragraph in the Independent Offices Appropriation Act, 1938, under the caption "Federal Emergency Administration of Public Works" is hereby amended by (a) striking out the words "in connection with the liquidation" and (b) striking out the sum of "$10,000,000" and inserting in lieu thereof the sum of "$15,000,000."

SEC. 205. The funds available to the Administrator for the making of loans or grants or loans and grants may be used for projects (in addition to other purposes for which funds may be used) of the following classes, in amounts not to exceed the sums specified for each such class: (a) For school projects (other than those included in subdivisions (b) and (c) of this section) to replace, eliminate, or ameliorate existing school facilities or conditions which, in the determination of the Administrator, are hazardous to the life, safety, or health of school children, $60,000,000 for grants and $11,000,000 for loans; (b) for projects which have been authorized, or for the financing of which bonds or other obligations have been authorized, at elections held prior to the date of enactment of this joint resolution, or for projects for which an authority or board constituting an independent

corporation without taxing power has been specifically created by a State legislature prior to such date, $70,000,000 for grants and $22,000,000 for loans; (c) for projects for which appropriations have been made by the legislatures of the States, $15,000,000 for grants and $2,000,000 for loans; (d) for projects to be financed, except for the grant, by the issuance to contractors of tax or assessment securities at not less than their par value: *Provided,* That an allotment shall not be made for any such project unless the applicant has, in the determination of the Administrator, made or incurred substantial expenditures or obligations in contemplation of receiving an allotment, $5,000,000 for grants; (e) for projects for which funds have been tentatively earmarked by the Administrator but for which formal allotments have not been made, $54,000,000 for grants and $78,000,000 for loans: *Provided,* That the grant for any such project shall not exceed the amount tentatively earmarked as a grant for such project: *Provided further,* That the amount specified for any of the foregoing classes may be increased by not to exceed 15 per centum thereof by transferring an amount or amounts from any other class or classes in order to effectuate the purposes of the title.

SEC. 206. No new applications for loans or grants for non-Federal projects shall be received or considered by the Administration after the date of enactment of this joint resolution.

SEC. 207. Title II of this joint resolution may be cited as the "Public Works Administration Extension Act of 1937."

Approved, June 29, 1937, 11 p. m.

APPENDIX B

EXECUTIVE ORDERS

1

EXECUTIVE ORDER

ADMINISTRATION OF PUBLIC WORK

Pursuant to the authority of "AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, and in order to effectuate title II—Public Works and Construction Projects—thereof;

1. I hereby appoint Colonel Donald H. Sawyer to exercise temporarily the office of Federal Emergency Administrator of Public Works.

2. I hereby appoint a Special Board for Public Works consisting of the following: The Secretary of the Interior, Chairman; the Secretary of War; the Attorney General; the Secretary of Agriculture; the Secretary of Commerce; the Secretary of Labor; the Director of the Budget; Colonel George R. Spalding and Assistant Secretary of the Treasury Robert.

During the ensuing 30 days the Federal Emergency Administrator of Public Works shall have authority to allot the sum of not to exceed $400,000,000 provided for in title II of said act for highway building for distribution among the States, Territories, and the District of Columbia,

and authority to allot the sum of not to exceed $238,000,000 to the Department of the Navy for the construction of certain vessels, the construction whereof conforms to the London Naval Treaty and has heretofore been approved by me.

The distribution of the money herein allocated for public roads shall be subject to the approval of the Board for Public Works.

The Federal Emergency Administrator of Public Works is hereby authorized to employ such necessary personnel on a temporary basis as may be approved by the Board.

During the next 20 days it shall be the duty of the Federal Emergency Administrator of Public Works and the Board herein constituted to study and report to me on all public-works projects which have heretofore been submitted or shall hereafter be submitted.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
June 16, 1933.

[No. 6174]

2

EXECUTIVE ORDER

ADMINISTRATION OF PUBLIC WORK

Pursuant to the authority of "An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, and in order to effectuate title II—Public Works and Construction Projects—thereof;

I hereby appoint Harold L. Ickes to exercise the office of Federal Emergency Administrator of Public Works.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
July 8, 1933.

[No. 6198]

3

EXECUTIVE ORDER

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

A. Delegation of functions and powers

Pursuant to the authority vested in me by section 201 (a) of the National Industrial Recovery Act, approved June 16, 1933, I hereby delegate to the Federal Emergency Administrator of Public Works the following functions and powers:

1. To establish such agencies, to accept and utilize such voluntary and uncompensated services, and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary, and to prescribe their authorities, duties, responsibilities, and tenure.

2. Under the conditions prescribed in section 203 of said Act, to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to section 202 of said Act; upon such terms as he shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project; to acquire by purchase, or by exercise of the power of eminent

domain, any real or personal property in connection with the construction of any such project and to lease any such property with or without the privilege of purchase; and to aid in the financing of such railroad maintenance and equipment as may be approved by the Interstate Commerce Commission as desirable for the improvement of transportation facilities.

3. In deciding to extend any aid or grant to any State, county, or municipality, to consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof.

4. In his discretion, and under such terms as he may prescribe, to extend any of the benefits of Title II of said Act to any State, county, or municipality notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county, or municipality to borrow money or incur indebtedness.

B. Regulations

Pursuant to the authority vested in me by section 209 of the National Industrial Recovery Act I hereby prescribe the following rules and regulations as necessary to carry out the purposes of Title II of said Act:

1. No convict labor shall be employed on any project constructed in whole or in part under the provisions of Title II of said Act. No materials manufactured or produced by convict labor shall be used on any such project.

2. No contractor or subcontractor on any such project who is subject to a code adopted pursuant

to Title I of said Act shall permit any employee to work in excess of the hours of labor prescribed in said code. No other contractor or subcontractor shall permit any employee to work more than 30 hours in any one week, except by authority of the Administrator; provided that working time lost in any week because of inclement weather or unavoidable delay may be worked within the succeeding 20 days; provided further, that in localities where a sufficient amount of labor is unavailable in the immediate vicinity of the project a maximum of 130 hours of labor in any calendar month may be authorized by the Administrator; provided further, that in localities so remote and inaccessible that employees must be housed in camps the Administrator may authorize labor not to exceed 8 hours in any one day and 40 hours in any one week.

3. No employee on any such project shall be paid less than a just and reasonable wage which shall be compensation sufficient to provide for the hours of labor as limited, a standard of living in decency and comfort. All such wages shall be paid in lawful money of the United States, in the full amount earned by each individual at the time of payment, not less often than once each week, and without deduction on account of goods purchased, rent, or other obligations, which obligations shall be subject to collection only by legal process.

4. Each contractor or subcontractor on any such project shall post in a prominent and easily accessible place at the site of the work a legible statement of all wage rates paid.

5. Should it appear that any individual employed on any such project has been or is being

paid less than hereinbefore prescribed, the Administrator shall notify the employer of such individual to pay him all wages due according to the prescribed rate. Upon 10 days' default on the part of such employer he shall be liable to the penalties provided in said Act for violation of these regulations.

6. Any violation of these rules and regulations may be notified by the Administator to the District Attorney of the appropriate district, who will proceed, if so directed by the Attorney General, to bring a criminal action for such violation.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
August 19 1933.

[No. 6252]

4

EXECUTIVE ORDER

DELEGATIN 3 CERTAIN FUNCTIONS AND POWERS TO THE FEDERAI EMERGENCY ADMINISTRATOR OF PUBLIC WORKS

By virtue of and pursuant to the authority vested in me by section 201 (a) of the National Industrial Recovery Act, approved June 16, 1933, 48 Stat. 195 (hereinafter referred to as the "Act"), I hereby delegate to the Federal Emergency Administrator of Public Works the following functions and powers:

1. In his discretion, and upon such terms and conditions as he may prescribe, to sell, assign, transfer, and deliver all securities or any part thereof purchased under the authority of section

203 of the said Act and of Title II of the Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934, 48 Stat. 1021, and to apply the proceeds as prescribed by section 203 of the said Act and said Emergency Appropriation Act, fiscal year 1935.

2. To alter, amend, or waive any or all rules and regulations set forth in Executive Order No. 6252 of August 19, 1933, and any other rule or regulation promulgated by the President under the authority of section 209 of said Act, and to prescribe pursuant to the authority of the said section 209 any other rules or regulations as are necessary to carry out the purposes of said Act; Provided, however, no rule or regulation the violation of which is made punishable by fine or imprisonment under the said section 209 shall become effective until approved by me.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
December 26, 1934.

[No. 6929]

5

EXECUTIVE ORDER

AUTHORIZING THE FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS TO CONTINUE TO PERFORM FUNCTIONS UNDER TITLE II OF THE NATIONAL INDUSTRIAL RECOVERY ACT AND TO PERFORM FUNCTIONS UNDER THE EMERGENCY RELIEF APPROPRIATION ACT OF 1935

Pursuant to the authority vested in me by the Emergency Relief Appropriation Act of 1935, ap-

proved April 8, 1935 (Public Resolution No. 11, 74th Congress), I hereby authorize the Federal Emergency Administration of Public Works, under the Federal Emergency Administrator of Public Works:

(a) to continue after June 16, 1935, to perform all of the functions which it was authorized to perform prior to June 16, 1935, under Title II of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 200);

(b) subject to the rules and regulations heretofore and hereafter prescribed by the President to carry out the Emergency Relief Appropriation Act of 1935, approved April 8, 1935, to perform the following functions under said Act:

(1) make loans or grants, or both, for projects of states, territories, possessions, including subdivisions and agencies thereof, municipalities and the District of Columbia, and self-liquidating projects of public bodies thereof, where, in the determination of the President, not less than twenty-five per centum of the loan or the grant, or the aggregate thereof, is to be expended for work under each particular project;

(2) carry out projects for slum clearance or low-cost housing, or both;

(c) to sell any securities acquired under Title II of the National Industrial Recovery Act, approved June 16, 1933, or under the Emergency Relief Appropriation Act of 1935, approved April 8, 1935, and all moneys realized from such sales shall be available for the making of further loans under the said Title II of the National Industrial Recovery Act or the said Emergency Relief Appro-

priation Act of 1935, in the performance of the functions herein authorized.

To the extent necessary to carry out the provisions of this Executive Order, the Administrator is authorized to acquire, by purchase or by the power of eminent domain, any real property or any interest therein, and improve, develop, grant, sell, lease (with or without the privilege of purchasing), or otherwise dispose of any such property or interest therein.

In the performance of the functions and duties herein prescribed, expenditures are hereby authorized for contract stenographic reporting services; supplies and equipment; purchase and exchange of law books, books of reference, directories, periodicals, newspapers, and press clippings; travel expenses, including the expense of attendance at meetings when specifically authorized by the Administrator; rental at the seat of Government and elsewhere; purchase, operation, and maintenance of passenger-carrying vehicles; printing and binding; and such other expenses as may be necesary to the performance of the functions herein authorized; and, subject to the rules and regulations heretofore and hereafter prescribed by the President, I hereby authorize the Administrator to accept and utilize such voluntary and uncompensated services and, with the consent of the State, such State and local officers and employees, and appoint, without regard to the provisions of the civil service laws, such officers and employees, as may be necessary, prescribe their duties and responsibilities and, without regard to the Classification Act of 1923, as amended, fix their compensation: Provided, That

insofar as practicable, the persons employed shall be selected from those receiving relief.

The unobligated balances on June 30, 1935, of allotments of funds made pursuant to Title II of the National Industrial Recovery Act, approved June 16, 1933, to departments and agencies of the Government which continue to exist after June 16, 1935, for the performance of functions of the Federal Emergency Administration of Public Works, are hereby reallocated for use by said departments and agencies, respectively, after June 30, 1935, for the purposes for which originally allocated thereto: Provided, That upon completion of the project or work any unexpended balances of the aforesaid reallocations shall be reported by the departments or agencies concerned to the Secretary of the Treasury who will cause such balances to be placed to the credit of the appropriations from which said allotments were made.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE
June 7, 1935.

[No. 7064]

APPENDIX C

STATE LEGISLATION

1

ALABAMA ACTS, EXTRA SESSION 1933, No. 107

AN ACT To authorize counties, municipal corporations, and cities within this State to acquire by purchase, construction, condemnation and/or otherwise electric-light plants, power plants, power lines, transmission lines and power distributing systems and to maintain, improve, extend, and operate public utilities and to borrow money for said purposes and to provide for the securing and repayment of such money with interest.

Be it enacted by the Legislature of Alabama:

SECTION 1. That any county, municipal corporation, city within this State is hereby authorized and empowered to acquire by purchase, construction, condemnation, and/or otherwise, and to maintain, extend, improve, and/or operate electric light plants, power plants, power lines, and electric distribution systems, together with the extension and the appurtenances thereto, and all of the property, tangible and intangible, and of like or different kind, to be used or useful in connection therewith, either within or without, or partly within and partly without, the corporate limits of such city or the boundaries of such county, under the provisions of this Act for the purpose of producing, obtaining, distributing, and/or furnishing an adequate supply of electricity for public, industrial, business, domestic, light, power, and/or other consumption within, or partly within and partly without the corporate limits of such city or the boundaries of such county. Franchise for the supply of said commodities, or any one or more of them, to other municipalities and/or to the inhabitants, indus-

tries, and/or businesses therein shall be included within the properties which any city or county may acquire under the provisions of this act, and such franchises may be acquired either from such other municipalities or from the owners of such franchises. All or any part of any existing electricity plant shall also be included in the properties which any city or county may acquire under the provisions of this act. Such city or county may acquire necessary or convenient rights-of-way within the city and without the city and within the County and without the County in order to reach any necessary or accessible source of power at a U. S. Government-owned Power Dam, or otherwise.

SECTION 1–A. Whenever any county, municipal corporation, or city, through its governing body, shall vote to take advantage of the authority herein granted, as a condition to the exercise of the authority herein granted it shall call an election, at which election the question of whether or not such county or municipality will enter upon the undertaking proposed by the governing body of the county or city will be voted upon. If the majority of the voters shall vote in the affirmative, then the county or municipal governing body shall proceed with the proposed undertaking in conformity with the provisions of this act and the law of the State pertinent thereto; but not otherwise. Such election shall be ordered, held, canvassed, and may be contested, in the same manner as is, or may be hereafter, provided by the law applicable to the authorization of municipal bonds.

SECTION 2. For the purpose of defraying the cost of acquiring such plants, or any one or more of

them, or any part or any part or parts thereof, and making improvements and extensions thereto, either by purchase, construction, condemnation, or otherwise, any such city may borrow money from the Reconstruction Finance Corporation, or from any other lender whomsoever, in such amount or amounts as the governing body of such city may deem necessary or expedient, but no such city that has reached or exceeded its constitutional debt limit which borrows money under the authority of this act shall bind its general credit, or incur any personal liability, or charge any general or special fund other than that herein authorized, or charge any property other than that herein authorized, for the repayment of such borrowed money, or the payment of interest thereon.

SECTION 3. Any such city which borrows money under the authority of this act may pledge, create a lien upon, and mortgage, any such plants, or any one or more of them, or any part or parts thereof, together with the extensions, improvements and appurtenances thereto and all other property, tangible or intangible, and of like or different kind, including franchises, acquired, constructed, or installed by means of money borrowed under the authority of this act, and also all or any part of the revenues derived from the operation of such plants, or any one or more of them, or any part or parts thereof, as security for the repayment of such borrowed money, with interest.

SECTION 4. In addition, and for the further security of the lender, any such city which has borrowed money under the authority of this act may enter into a contract, or contracts, with the lender binding itself for the proper application of money

borrowed from such lender, and for the operation and maintenance of any such plants, or any one or more of them, or any part or parts thereof, and for the imposition, collection, safeguarding, application, disposition and/or remittance or reasonable rates, electricity supply and service, and for the promulgation of reasonable regulations relating to rates and service, and for any other act, series of acts, duty or thing, not inconsistent with the provisions of this act, for the protection of the lender's loan and the assurance of a reasonable return upon the properties in which such loan is invested, out of which operating expenses and the principal and interest of such loan may be met. But no municipal corporation acquiring or constructing any electric light plant or electric distributing system under the provisions of this act, nor receiver of any such electric light plant or distributing system shall charge any rate for electric supply and service that is higher than the rate for similar electric supply and service that has been authorized and approved by the Alabama Public Service Commission for public utility companies operating in cities of approximately the same size in Alabama.

SECTION 5. Any such city which borrows money under the authority of this act may evidence the loan by an instrument, or instruments, in such form and of such tenor and maturity as may be agreed upon between lender and borrower, but no such instrument shall purport, or be effective, to impose upon the borrower, or the borrower's funds or property, any liability in excess of, or inconsistent with, the liability authorized to be assumed by this act.

SECTION 6. Neither this act, nor anything herein contained, shall be construed as a restriction or limitation upon any power or right which any such city may have in the absence thereof, but shall be construed as cumulative of any such power or right. Nor shall any enumeration of subjects herein be construed to exclude any subject which is embraced within any general language or this act.

SECTION 7. If, for any reason whatsoever any section or part of this act shall be declared invalid, the invalidity of such section or part shall not affect the validity of the remainder of this act.

SECTION 8. The provisions of this Act are to be considered cumulative and for the purpose of further enabling counties, cities, and municipal corporations in the State of Alabama to avail themselves either by purchase, construction, or condemnation of power-distributing systems and transmissions lines in acquiring power from the United States Government or other owned power stations such as that now located at Wilson Dam, Alabama, and for the purpose of borrowing money to defray the expenses of same and securing its repayment.

Approved April 6, 1933.

2

ACT NO. 299 OF THE 1933 ACTS OF THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA

AN ACT to Authorize Any County, Township, City or Incorporated Town of the State of South Carolina to Purchase or Construct a Waterworks System, Water Supply System, Sewer System, Sanitary Disposal Equipment and Appliances, Light Plant or System, Natural Gas System, Ice Plants, Power Plants and/or Distribution Systems, Gas Plants, Incinerator Plants, Hospitals, Piers, Docks, Terminals, Air Ports, Toll Bridges, Ferries, Drainage Systems, Public Markets, Public Recreation Parks, Swimming Pools, Golf Courses and Stadiums, and in Furtherance Thereof to Purchase or Construct

Any Necessary Part of Any Such System Either Within or Without the Limits of Such County, Township, City, or Incorporated Town, as the Case May Be: and to Authorize Any County, Township, City or Incorporated Town of the State of South Carolina Now or Hereafter Owning and Operating Any Such System or Plant to Improve, Enlarge, Extend or Repair the Same: and for Any Such Purpose or Purposes to Authorize Any Such County, Township, City, or Incorporated Town to Issue Revenue Bonds Payable Solely from the Revenues Derived from the Operation of Any Such System, Project, or Systems: to Regulate the Issuance, Sale, Retirement, and Refunding of Such Bonds and of Other Matters in Connection Therewith: to Regulate the Use of the Revenues of Such System or Systems When Such Bonds are Issued or Outstanding: to Provide for the Operation of Any Such System or Systems in Case of Deficiencies in Such Revenues, and for Other Purposes.

SECTION 1. Sub-Divisions of the State May Purchase, Construct, and/or Improve Waterworks Systems, Water Supply Systems, Sewer Systems, Sanitary Disposal Equipment, Light Plants, Natural Gas Systems, Ice Plants, Power Plants, Gas Plants, Incinerator Plants, Hospitals, Piers, Docks, Terminals, Air Ports, Toll Bridges, Ferries, Drainage Systems, Public Markets, Public Recreation Parks, Swimming Pools, Golf Courses, and Stadiums—"System" Defined.

Be it enacted by the General Assembly of the State of South Carolina: That any county, township, city, or incorporated town of the State of South Carolina is authorized to purchase or construct a waterworks system, water supply system, sewer system, sanitary disposal equipment, and appliances, light plant or system, natural gas system, ice plants, power plants and/or distribution systems, gas plants, incinerator plants, hospitals, piers, docks, terminals, air ports, toll bridges, ferries, drainage systems, public markets, public recreation parks, swimming pools, golf courses, and stadiums, and in furtherance thereof to purchase or construct any necessary part of any such system either within or without the limits of *such*

county, or the corporate limits of such city or incorporated town, and any county, township, city, or incorporated town of the State of South Carolina which may now or hereafter own and operate any such system is authorized to improve, enlarge, extend or repair the same. The work system as used in this Act shall include all of the projects and undertakings referred to in this section.

SECTION 2. Cumulative—Alternate Method.—This Act shall be construed as cumulative authority for the purposes named in Section 1 hereof, and as to the manner and form of issuing revenue bonds for any such purpose or purposes, and shall not be construed to repeal any existing laws with respect thereto, it being the purpose and intention of this Act to create an additional and alternate method for the purposes herein named.

SECTION 3. "Borrower" Defined.—The word "borrower" as used in this Act shall be construed to mean the county, township, city, or incorporated town as the case may be, operating under this Act.

SECTION 4. "Borrowing Body" Defined.—The term "governing body" as used in this Act shall be construed to mean, in the case of a county, the Board of County Commissioners, or other like governing body thereof, in the case of a city or incorporated town, the Board of Commissioners, the Mayor and Council, or other like governing body thereof, and in the case of a township the Board of County Commissioners, or the governing body of the County in which the township is located.

SECTION 5. Make Estimate of System.—Whenever the governing body of any borrower shall determine to purchase, construct, improve, enlarge, extend, or repair any system named in Section 1

under the provisions of this Act, it shall first cause an estimate to be made of the cost thereof, and the fact that such estimate has been made and the amount thereof shall appear in the ordinance authorizing and providing for the issuance of the bonds.

SECTION 6. Powers of Borrower—Ordinances—Resolutions.—For the purposes of this Act any borrower is authorized to adopt ordinances providing for the issuance of revenue bonds as herein stated, and any and all other appropriate ordinances and resolutions deemed necessary to effectuate the full intent and purpose of this Act, including the segregation of revenues derived from the operation of any project named in Section 1 hereof, the determination, fixation, and revision from time to time of rates to be charged for services, and any and all other necessary ordinances and resolutions to protect the properties, to provide for the adequate operation thereof, and to insure the security of the bonds. Provided, However, That in the case of counties and townships the style of any ordinance or resolution adopted under this Act shall be the same as is provided by the laws of the State in the case of cities, and the manner of adoption thereof shall be as is provided in the general laws of the State for cities. The amendment of such ordinances and resolutions of counties shall be as is provided by the general laws of the State for amendment of ordinances of cities. Such ordinances and resolutions of counties shall be recorded in the minutes of the governing body thereof as soon as practicable after their passage and shall be authenticated by the signature of the clerk of such governing body. Any such ordinances or

resolutions of counties may be published in a newspaper of general circulation in such county.

SECTION 7. May Borrow — Issue Bonds— Bonds—Payment.—For the purpose of defraying the cost of purchasing, constructing, improving, enlarging, extending, or repairing any such system or project, any borrower may borrow money and issue its negotiable serial bonds, provided that no such bonds shall be issued unless and until authorized by an ordinance which shall set forth a brief description of the contemplated improvement, the estimated cost thereof, the amount, maximum rate of interest, time and place of payment, and other details in connection with the issuance of the bonds. Such serial bonds shall bear interest at not more than six per cent (6%) per annum, payable semi-annually, and shall be payable at such times, not exceeding forty-five (45) years from their date, and at such places as shall be prescribed in the ordinance providing for their issuance. The bonds and the coupons shall be executed in such manner and shall be substantially in the form provided in the authorizing ordinance. Such bonds shall be sold in such manner and upon such terms as the governing body shall deem for the best interests of the borrower. In no event shall any of the bonds be sold on a basis to yield more than six per cent (6%) per annum from the date of sale to the date of average maturity of the bonds sold. Provided, however, That in any contract for the purchase or construction of any system or project named in Section 1, or for the improvement, enlargement, extension, or repair of any such system or project provision may be made that payment therefor shall be made in such bonds. Such bonds

and their coupons may be made payable in lawful money of the United States of America, or in gold coin of the standard weight and fineness existing on the date thereof. Such bonds shall mature annually, or semi-annually and the first installment thereof shall be made payable not more than five (5) years from the date of such bonds. No such installment shall be more than two and one-half times as great in amount as the smallest prior installment of the same issue. If all the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. The principal of and interest upon such bonds shall be payable solely from the revenue derived from the operation of the system or project for the purchase, construction, improvement, enlargement, extension, or repair of which the same are issued; Provided, however, That where a borrower improves, enlarges, extends, or repairs any system or project named in Section 1 the principal of and interest upon such bonds may be made payable from the revenues derived from the operation of the entire system or project. No bond or coupon issued pursuant to this Act shall constitute an indebtedness of such borrower within the meaning of any State constitutional provision or statutory limitation. It shall be plainly stated on the face of each such bond and coupon that the same has been issued under the provisions of this Act and that it does not constitute an indebtedness of such borrower within any State constitutional provision or statutory limitation. Provided, however, That any municipality now or hereafter owning and operating a system or project named in Section 1, whether constructed under the provisions of

this Act or not, and desiring to improve, enlarge, extend or repair the same, may issue revenue bonds under the provisions of this Act to pay for such improvements, enlargements, extensions or repairs, payable from the net revenues to be derived from the operation of the existing system or project as improved, enlarged, extended or repaired, but nothing in this proviso shall be construed as authorizing any such municipality to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention hereof being to authorize the pledging, setting aside and segregation of such revenues for the construction of such improvements, enlargements, extensions or repairs only where consistent with outstanding obligations of such municipality.

SECTION 8. Bond Holders Have Lien on System.—There shall be created in the authorizing ordinance a statutory lien upon any such system or project, and the appurtenances and extensions thereto so to be purchased, constructed, improved, enlarged, extended or repaired, to and in favor of the holders of said bonds and each of them, and to and in favor of the holders of the coupons of said bonds, and each of them. Provided, however, That where any borrower purchases, constructs, improves, enlarges, extends or repairs any system or project named in Section 1, said statutory lien may be created and declared to be upon the whole of such combined system or project with appurtenances and extensions thereto, if the governing body so determines.

SECTION 9. Enforcement of Lien of Bond Holders.—Such system project or combined system so

purchased, constructed, improved, enlarged, extended or repaired shall remain subject to said statutory lien until payment in full of the principal of and interest upon said bonds. Any holder of any said bonds or of any of the coupons representing interest accrued thereon, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce said statutory lien and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officials of the borrower, including the fixing of sufficient rates, the collection of revenues, the proper segregation of the revenues of the project or combined system, and the proper application thereof. Provided, however, That said statutory lien shall not be construed to give any such bond or coupon holder authority to compel the sale of such project or combined system or any part thereof.

SECTION 10. Receiver — Appointment — Duties and Powers.—If there be any default in the payment of the principal of or interest upon any of said bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the system, project, or combined system so encumbered on behalf of the borrower with power to fix and charge rates and collect revenues sufficient to provide for the payment of any bonds or other obligations outstanding against said systems or combined system and for the payment of the expenses of operating and maintaining the same and to apply the income and revenues of said system, project, or combined system in conformity with this act and the ordinance providing for the issuance of such bonds.

SECTION 11. Limitations of Bonds.—The bonds authorized hereunder shall not be subject to any limitations or provisions of the municipal bond code or the bond laws for counties as now in force or hereafter amended.

SECTION 12. Bonds Legal Investments.—Bonds issued under the provisions of this Act are legal investments for executors, administrators, trustees, and other fiduciaries and for savings banks and insurance companies organized under the laws of this State.

SECTION 13. Bonds Tax Exempted.—The bonds and interest coupons issued hereunder are hereby exempted from any and all State, County, municipal, and other taxation whatsoever under the laws of the State of South Carolina, and it shall be plainly stated on the face of each such bond as follows: "The principal of and interest on this bond are exempted from any and all State, county, and municipal and other taxation whatsoever under the laws of the State of South Carolina."

SECTION 14. Bonds Negotiable.—Such bonds shall have all the qualities of negotiable instruments under the law merchant and the negotiable instruments law.

SECTION 15. Deposit Proceeds from Bonds.—The governing body, where practicable, shall require that the proceeds of the sale of bonds issued under the provisions of this Act be deposited in a special account or accounts in a bank or banks which are members of the Federal Reserve System, and shall require, insofar as practicable, that each such deposit be secured by United States Government securities having an aggregate market value at least equal to the sum at the time on deposit, or

in any event, the proceeds shall be deposited in some bank or other depository, either within or without the State, which will secure such deposit satisfactorily to said governing body.

SECTION 16. Use of Proceeds from Bonds.—All moneys received from any such bonds shall be used solely for the purchase, construction, improvement, enlargement, extension or repair of the system, project, or combined system for which issued, including any engineering, legal and other expenses incident thereto: Provided, however, That such moneys may be used also to advance the payment of the interest on such bonds during the first three (3) years following the date of such bonds: Provided, That any unexpended balance of the proceeds of the sale of any such bonds remaining after the completion of the project for which issued shall be paid immediately into the Bond and Interest Redemption Fund for such bonds, and the same shall be used only for the payment of the principal of the bonds, or, in the alternative, to acquire outstanding bonds of the general issue from which the proceeds were derived, by purchase of such bonds at a price (exclusive of accrued interest) not exceeding the face amount thereof. Any bonds so acquired by purchase shall be cancelled and shall not be reissued.

SECTION 17. Undelivered Bonds Executed by Ex-officers Valid.—In case any of the officers whose signatures or counter-signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures or counter-signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

SECTION 18. Payment for Service by Borrower.—No free service shall be furnished by any such system or combined system to the county, township, city or incorporated town or to any agency, instrumentality, person, firm or corporation. The reasonable cost and value of any service rendered to any such borrower by any such system, project, or combined system shall be charged against the borrower and shall be paid for monthly as the service accrues from the current funds, or from the proceeds of taxes which such borrower, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for that purpose, and such funds, when so paid, shall be accounted for in the same manner as other revenues of such system or combined system.

SECTION 19. Additional Bonds.—Any borrower purchasing, constructing, improving, enlarging or repairing any such system, project or combined system pursuant to the provisions of this Act, may, at the time of the authorization of such bonds for any such purpose or purposes, provide in the authorizing ordinance for additional bonds for other extensions and permanent improvements, which additional bonds may be issued and be negotiated from time to time as such proceeds for such purpose may be necessary. Such bonds, when so negotiated, shall have equal standing with the bonds of the same issue.

SECTION 20. Revenue Refunding Bonds.—Where a borrower has outstanding any bonds issued under the provisions of this Act, it may thereafter issue and negotiate new bonds on such terms as the governing body shall deem advisable for the purpose of providing for the payment of any such outstanding

bonds. Such new bonds shall be designated "revenue refunding bonds," and shall be secured to the same extent and shall have the same source of payment as the bonds which have been thereby refunded.

SECTION 21. Rates for Service.—Rates for services furnished by any such system or combined system shall be fixed precedent to the issuance of the bonds. Such rates shall be sufficient to provide for the payment of the interest upon and the principal of all such bonds as and when the same become due and payable, to create a Bond and Interest Redemption Fund therefor, to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the system or combined system necessary to preserve the same in good repair and working order, to build up a reserve for depreciation of the existing system, project or combined system, and to build up a reserve for improvements, betterments and extensions to the existing system, project, or combined system other than those necessary to maintain the same in good repair and working order as hereinbefore in this Section provided. Such rates shall be fixed and revised from time to time so as to produce these amounts, and the governing body shall covenant and agree in the ordinance authorizing the issuance of such bonds, and on the face of each bond at all times to maintain such rates for services furnished by such system, project or combined system as shall be sufficient to provide for the foregoing.

SECTION 22. Bond and Interest Redemption Fund—Operation and Maintenance Fund—Depreciation Fund—Contingent Fund.—In the author-

izing ordinance the governing body of the borrower shall set aside monthly (or oftener if deemed advisable) and shall pledge the gross revenues of the system, project, or combined system into separate and special funds as follows: Out of the gross revenues there shall be first set aside a sum sufficient to pay the principal of and the interest upon the bonds as and when the same become due and payable. In the event that the gross revenues of any calendar, operating, or fiscal year shall be insufficient to pay the principal of and interest on the bonds maturing in any such calendar, operating, or fiscal year, then an additional amount sufficient to pay the principal of and interest on such bonds outstanding and unpaid shall be set aside out of the gross revenues of the next succeeding calendar, operating, or fiscal year and applies to the payment of the principal of and interest on such outstanding and unpaid bonds. This fund shall be designated "Bond and Interest Redemption Fund." Out of the remaining gross revenues there shall be next set aside a sum sufficient to provide for the payment of all expenses of administration, operation, and such expenses for maintenance as may be necessary to preserve the system or combined system in good repair and working order. This fund shall be designated "Operation and Maintenance Fund." Out of the remaining gross revenues there shall be next set aside a sum sufficient to build up a reserve for depreciation of the existing system or combined system. This fund shall be designated "Depreciation Fund." Out of the remaining gross revenues there shall be next set aside a sum sufficient to build up a reserve for improvements, betterments, and extensions to the existing system, project, or com-

bined system other than those necessary to maintain the same in good repair and working order as hereinbefore provided for. This fund shall be designated "Contingent Fund." Any surplus revenues thereafter remaining shall be disposed of by the governing body of the borrower as it may determine from time to time to be for the best interest of the borrower. Provided, However, that in the segregation and separation of said gross revenues into the several funds in this Section stated, the governing body may prescribe a reasonable excess amount to be placed in the Bond and Interest Redemption Fund from time to time during the earlier years of maturities of such bonds as thereby to produce and provide a cushion fund to meet any possible deficiencies therein in maturities of future years, and in the event that such excess amounts are thus provided, provision may be made in the ordinance for the scaling down of the amounts of such future years in the event the surplus so provided in the earlier years may then be found to have been accumulated and to be available. Bonds issued under the provisions of this Act shall be payable solely from the revenues in said Bond and Interest Redemption Fund.

SECTION 23. Payment Expenses of Operation or Maintenance.—Nothing in this Act shall be construed to prohibit the borrower from appropriating and using any part of its available income or revenues derived from any source other than from the operation of such system, project or combined system in paying any immediate expenses of operation or maintenance of any such system, project or combined system, but nothing in this Act shall be construed to require the borrower to do so.

SECTION 24. Custodian of Gross Revenues—Trust Funds.—The governing body of the borrower shall designate as custodian of the gross revenues from the operation of the system or combined system a bank or trust company duly qualified and doing business within the State of South Carolina, which shall be satisfactory to the governing body of such borrower. The Bank or trust company shall signify its acceptance of such custodianship by a written instrument directed to the governing body of the borrower. All funds from time to time derived from the operation of such system, project, or combined system, or funds of the borrower supplemental to the Operation and Maintenance Fund, the Depreciation Fund and/or Contingent Fund shall be deposited by such borrower with such bank or trust company and be set apart by such bank or trust company pursuant to written instructions from such borrower into the appropriate fund or funds designated in Section 22 of this Act. Each and all of said designated funds from time to time held by such bank or trust company shall be impressed with a trust for the benefit of the person or persons entitled thereto.

SECTION 25. Year Basis.—The ordinance authorizing the issuance of such bonds shall definitely determine whether such system, project, or combined system shall be operated upon a calendar, operating, or fiscal year basis, and the dates of the beginning and ending of same.

SECTION 26. Surplus in Operation and Maintenance Fund—Disposition.—If any surplus shall be accumulated in the Operation and Maintenance Fund which shall be equal to the cost of operating and maintaining such system, project, or combined

system during the remainder of the calendar, operating, or fiscal year, as provided by the authorizing ordinance, and the cost of operating and maintaining such system, project, or combined system during the succeeding like calendar, operating, or fiscal year, any such surplus may be transferred at any time by the governing body to the Depreciation Fund, Contingent Fund, or to the Bond and Interest Redemption Fund.

SECTION 27. Surplus in Depreciation Fund—Disposition.—If any surplus shall be accumulated in the Depreciation Fund over and above that which the governing body shall find may be necessary therein during the then present calendar, operating, or fiscal year and the next ensuing calendar, operating, or fiscal year, any such excess may be transferred to the Contingent Fund or the Bond and Interest Redemption Fund.

SECTION 28. Surplus in Contingent Fund—Disposition.—If any surplus shall be accumulated in the Contingent Fund over and above that which the governing body shall find may be necessary for reasonable and proper improvements, betterments, and extensions to the existing system or combined system during the present calendar, operating, or fiscal year and the next ensuing calendar, operating, or fiscal year, any such excess may be transferred to the Bond and Interest Redemption Fund or may be applied, in so far as possible, in the purchase or retirement of outstanding bonds issued under the provisions of this Act, and for that purpose the governing body is authorized to purchase such bonds not due in the open market at not more than the fair market value thereof. Where such bonds are purchased for investment the income

from such investment shall be carried into the Contingent Fund.

SECTION 29. Regulation of Rates—Franchise—No Effect on State Board of Health.—Rates charged for services furnished by any system or combined system purchased, constructed, improved, enlarged, extended, or repaired under the provisions of this Act shall not be subject to supervision or regulation by any State bureau, board, commission, or other like instrumentality or agency thereof, and it shall not be necessary for any borrower operating under the provisions of this Act to obtain any franchise or other permit from any State bureau, board, commission, or other instrumentality thereof in order to construct, improve, enlarge, extend, or repair any system or combined system named in this Act. Provided, however, That the functions, powers, and duties of the State Board of Health shall remain unaffected by this Act.

SECTION 30. Books and Accounts—Annual Report—Inspection.—Any borrower issuing revenue bonds under the provisions of this Act shall install and maintain proper books of record and account (separate entirely from other records and accounts of such borrower) in which full and correct entries shall be made of all dealings or transactions of or in relation to the properties, business, and affairs of the system or combined system. The governing body of such borrower, not later than three months after the close of any calendar, operating, or fiscal year, shall cause to be prepared a balance sheet and an income and surplus account, showing, respectively, in reasonable detail the financial condition of the system or combined system at the

close of such preceding calendar, operating, or fiscal year and the financial operations thereof during such year. Said balance sheets and income and surplus accounts shall at all reasonable times during usual business hours be open to examination and inspection by any taxpayer, user of the services furnished by the system, or any holder of bonds issued under the provisions of this Act, or anyone acting for or on behalf of such taxpayer, user of the services of the system, or bondholder.

SECTION 31. Pay Bonds Before Maturities.—The governing body of the borrower authorizing bonds under the provisions of this Act may make provision for any of such bonds to be called for payment on any interest payment date before maturity, provided the borrower shall have on hand in its Bond and Interest Redemption Fund sufficient moneys not otherwise appropriated or pledged, in excess of the interest and principal requirements within the next two succeeding calendar, operating, or fiscal years.

SECTION 32. No effect on Existing Contracts and Liens.—Nothing in this Act shall be construed as authorizing any borrower to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention hereof being to authorize the pledging, setting aside, and segregation of gross revenues only where consistent with outstanding obligations of such borrower.

SECTION 33. Issue Bonds without Election or Notice.—This Act shall be construed as authorizing the issuance of such bonds provided for herein without submitting the proposition for the approval of same to the voters of the borrower.

Where bonds are authorized under this Act it shall not be necessary to make publication of any ordinance, resolution, notice, or proceeding relating thereto. Provided, however, That nothing in this Act shall be construed to prohibit the governing body from making such publication as it may deem necessary in relation thereto.

SECTION 34. Construe Liberally.—This Act, being necessary for and to secure the public health, safety, convenience, and welfare of the counties, townships, cities and incorporated towns of the State of South Carolina, shall be liberally construed to effect the purposes hereof.

SECTION 35. State Bond Commissioner—Duties—Time to Test Validity of Bonds.—For the protection of purchasers of any bonds authorized pursuant to the provisions of this Act, the Attorney General is hereby made Ex-officio Bond Commissioner of the State of South Carolina. It shall be the duty of such Bond Commissioner to prepare uniform forms and prescribe a method of procedure under the laws of the State in all cases where it is desired to issue said bonds in any county, township, city, or incorporated town of the State of South Carolina; and it shall be the further duty of said Bond Commissioner to examine into and pass upon any of said bonds so issued, and said bonds, when declared by the certificate of said Bond Commissioner to be issued in accordance with this Act and the forms of procedure so provided, shall be incontestable in any court in the State of South Carolina unless suit thereon shall be brought in a court having jurisdiction of the same within thirty (30) days from the date of the approval of said bonds by the Bond Commissioner. No bond here-

after issued by any county, township, city, or incorporated town pursuant to this Act shall be valid without the certificate of said Bond Commissioner.

SECTION 35-A. State Sinking Fund Commission Approve Bonds.—All Bonds authorized pursuant to the provisions of this Act shall be subject to the approval of the Sinking Fund Commission of the State of South Carolina and no bonds issued under the provisions of this Act shall be valid without the certificate of approval of the Sinking Fund Commission.

SECTION 36. Saving Clause.—The invalidity of any section, sentence, clause, paragraph, or portion of this Act shall not affect the validity of the remainder of this Act.

3

ACT NO. 1095 OF THE 1934 ACTS OF THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA

AN ACT to Authorize and Empower the Finance Board for Greenwood County to Contract with the Public Works Administration; to Perform such Acts and Duties as may be Necessary and Incident to Securing a Loan, or Loans, for a Hydro-Electric Project; to Define and Limit its Duties and Powers; to Empower the said Board to Borrow Pursuant to Authority Conferred by any Other Statute for the Purposes Named Herein and Especially Under the Provisions of an Act Entitled "An Act to Authorize any County, Township, City or Incorporated Town, Etc." Designated as Act No. 299 of the Acts of the General Assembly of 1933.

SECTION 1. Finance Board, Greenwood County, Borrow for Hydro-Electric Plant.—*Be it enacted by the General Assembly of the State of South Carolina:* That the Finance Board of Greenwood County is authorized and empowered to borrow from the Public Works Administration, or any other agency or corporation, organized under the Federal Government or pursuant to any Act of the Congress of the United States, the proceeds of any

such loan to be used for the purpose of acquiring any necessary lands, easements and rights of way for a hydro-electric plant and for the construction thereof at a dam at or near "Buzzard Roost" on Saluda River and for the purchase of any and all necessary machinery or other equipment used in connection with the operation of any such plant, with the further right to construct and maintain power transmission lines.

SECTION 2. Powers of Board—Project Self Liquidating.—The said Finance Board of Greenwood County is authorized and empowered to do any and all acts necessary and incident to securing any such loans and to execute evidence of indebtedness therefor under such agreement as the said Board and the agency or the corporation from whom the loan is obtained may agree upon. They are empowered to pledge the property acquired as well as the income therefrom to the retirement of any such loan.

It is declared that this project is a self liquidating project and that any indebtedness or obligation created by the said Board shall not be a direct and primary obligation of the County of Greenwood; bonds or securities issued hereunder to be in accordance with the terms, conditions, and powers granted and given in Act No. 299 of the Acts of the General Assembly, 1933, including all amendments thereto.

SECTION 3. Keep Funds Separate.—All funds borrowed pursuant to the authority conferred in this Act, as well as in pursuance of the authority conferred by any other statute, to be used for the purposes named herein, shall be kept separate and distinct from other funds of Greenwood County

and not commingled or intermingled with the finances of the said County in any respect.

SECTION 4. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SECTION 5. This Act shall take effect upon its approval by the Governor.

Approved the 12th day of April 1934.

APPENDIX D

LEGISLATIVE HISTORY

1

INTENT OF CONGRESS WITH RESPECT TO COMPETITIVE PROJECTS AS SHOWN BY LEGISLATIVE HISTORY OF EMERGENCY RELIEF APPROPRIATION ACT, 1935

In the debates on the Emergency Relief Appropriation Act of 1935, while that legislation was pending in Congress, the following amendment was introduced by Senator Austin:

> SECTION —. Public projects, Federal, State, or municipal, undertaken pursuant to this joint resolution, shall be selected and planned so that when completed they shall not complete with existing private enterprises.

Said amendment was voted down by the Senate. (79 Cong. Rec. 3972–3973.)

The debates in the Senate on the subject of that proposed amendment were as follows (79 Cong. Rec. 3972):

> Mr. AUSTIN. Mr. President, that amendment needs very little explanation. Everyone understands its scope, and everyone must recognize at once that it is in full sympathy with the purposes of the pending joint resolution.
>
> Of course, there is nothing which can return to active service or employment men and women who are not now employed so much as the revival of private enterprise. The Government cannot possibly employ so

many people as can private employers. Of course, too, as the second premise, there is nothing which will encourage private enterprise to start up so much as the removal of fear of competition by the Government and the restoration of confidence.

Therefore this amendment is intended to promote the objects of the joint resolution; and I hope it will receive favorable consideration.

Mr. GLASS. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield to the Senator from Virginia.

Mr. GLASS. There is so much confusion in the Senate that I did not distinctly hear the amendment to the joint resolution proposed by the Senator from Vermont, as read. However, I think I gathered the substance of it; and I should like to ask the Senator from Vermont if he does not think it is covered by section 7 of the joint resolution?

Mr. AUSTIN. I think not. I think it is not covered by section 7 of the joint resolution.

Mr. GLASS. I desire that the clerk again read the amendment.

The VICE PRESIDENT. The amendment will be restated.

* * * * *

Mr. GLASS. Mr. President, section 7 of the joint resolution provides:

"Wherever practicable in the carrying out of the provisions of this joint resolution, full advantage shall be taken of the facilities of private enterprise."

Mr. AUSTIN. Mr. President, as I understand section 7, I do not believe it accomplishes the same objective as does my amendment. If the distinguished Senator in charge of the joint resolution believes they

mean the same thing, I should like to have my amendment agreed to, because I think it would remove from doubt the meaning of the joint resolution.

Mr. GLASS. I have r doubt of the meaning of that provision of the joint resolution.

Mr. JOHNSON. Mr. President, I ask the attention of the Senator from Virgina [Mr. Glass] for a moment.

I submit to the Senator from Virginia that the two provisions have diametrically different meanings. The purpose of the amendment presented by the Senator from Vermont is to prevent the ultimate construction of anything which may interfere with something which may have been done by private enterprise. That is not the purpose at all of section 7, as I understand. I presume our old friends, the power companies, come into the picture thus; and the Senator is afraid that some power plant may be erected in a municipality by funds which come from this source to provide work for men who need work in a particular municipality, and he does not want the funds used in that particular manner.

Mr. GLASS. Mr. President, the Senator from California was not explicit enough to suit me as to which Senator he had in mind when he said a Senator was proposing to protect the Power Trust.

Mr. JOHNSON. No, no; I was not speaking of the Senator from Virginia in that regard. The Senator referred to section 7, which conveys one idea. The other idea to which I referred was presented by the Senator from Vermont.

Mr. GLASS. I want to know which provision it is that protects the Power Trust. I do not think mine does.

Mr. JOHNSON. My remarks in that regard were perfectly plain, and the Senator from Virginia ought not to take umbrage at them at all.

Mr. BYRNES. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield to the Senator from South Carolina.

Mr. BYRNES. If a request for money should be made for the development of a rural electrification project, the Senator's amendment, as I gather its purport, would prohibit expenditure for such a purpose. Is that true?

Mr. AUSTIN. Mr. President, I do not understand it to provide so at all.

Mr. BYRNES. Is not the language of the amendment that no funds shall be used for any project which, when completed, would compete with a private enterprise?

Mr. AUSTIN. The last sentence of the Senator from South Carolina was not included in his previous question.

Of course, the construction of an electrification project competing with private enterprise would come within the prohibition of the amendment, if the amendment were adopted.

Let me say, however, before I finish, that it is something of an assumption to say that the power companies are back of this amendment. The power companies had nothing at all to do with it.

Mr. BYRNES. Mr. President, will the Senator yield to me?

Mr. AUSTIN. I yield.

Mr. BYRNES. Of course, I did not make that statement. I was simply asking for the Senator's construction of his own amendment—whether or not it would prohibit the construction of a rural electrification project

if that project competed in any way with an existing enterprise?

Mr. AUSTIN. Yes, of course, it would. That is just the point. The waste of money in putting up a competing line of rural electrification is one of the things the amendment would prevent.

Mr. BYRNES. How about the construction of a housing project?

Mr. AUSTIN. It would depend upon where it was located and whether it would compete.

Mr. BYRNES. If a housing project were constructed at a place where other houses were rented, would the Senator say it was in competition with the landlords who owned the other houses?

Mr. AUSTIN. Not unless it competed with private enterprise.

Mr. BARKLEY. Mr. President, of course it would compete with private enterprise if people rented the houses which were constructed under a housing project. If they did not rent the houses constructed under the project they might be forced to rent some other houses. That would be competition; would it not?

Mr. AUSTIN. That does not necessarily follow. A housing project which was not in a place where houses were already in existence would not be in competition with other houses.

Mr. BARKLEY. A housing project is not going to be undertaken out in the middle of a vacant field. It would undoubtedly be in a city or town. It is difficult to see how a housing project in a thickly settled city might not, when completed, compete with some private houses already there.

Let us suppose that in some city, town, or village there is a water system, owned by a

private organization, which is inadequate to serve the citizens. Under the Senator's amendment it would be impossible for the municipality to install a water system which would serve the community because one was already there, although it was inadequate to serve the community.

Mr. AUSTIN. I grant that is a possibility. Of course, one can by a stretch of the imagination picture a situation for which the amendment would not be ideal, but I have in mind projects for manufacturing and retail businesses engaged in various activities which have been heretofore simply left to private enterprise—enterprise that provides the taxes which will go to pay the sums appropriated by this measure. It is to prevent an enormous amount of capital being thrown into competition with private capital that I offer the amendment. I ask for a vote.

In the foregoing debates, reference was made to Section 7, which was adopted by Congress but which, when the Bill was finally enacted, became Section 8. That section reads as follows: "Whenever practicable in the carrying out of the provisions of this joint resolution, full advantage shall be taken of the facilities of private enterprise." The following debate (79 Cong. Rec. 2396) clearly shows the meaning of that section:

Mr. MCCARRAN. * * * This amendment was suggested by those who had been engaged in the contracting business throughout the country. They feared that perchance the contractors, who have $1,600,000,000 invested in various lines of employment, might be entirely left out; so they sought a general amendment, which I offered in the committee, and it was adopted to the extent

and in the language stated, that, wherever practicable, the facilities of private enterprise should be resorted to. That simply means, as in the building of highways throughout the country today, we have highway-construction engineers or highway-construction groups, with their equipment, all ready to go to work, that, if the President wishes, and thinks it practicable, he may call upon them so far as their facilities permit.

That is the object of the amendment. I was not the author of it, but I did sponsor it, and I sponsor it now, in furtherance of giving to the contractors of the country an opportunity to employ labor they have carried, during the hours of depression, many of them keeping their equipment and labor contingent, on at a terrific loss. Wherever it is practicable, the amendment provides that their facilities shall be utilized.

That is the explanation of the amendment. If the Senator has any further questions, I shall be glad to answer them. I again apologize to the Senator. I was not giving attention to his question, and I am very sorry.

Mr. BONE. Mr. President, the Senator from Nevada owes me an apology. There was a great deal of confusion in the Chamber when I asked the question. I can understand why everyone would be confused; but I know that these words have meaning, and that some interpretation is going to be given them by those who will construe the joint resolution, especially by those in Washington, D. C., who are going to disburse this money.

Mr. MCCARRAN. That is true.

Mr. BONE. I want to be absolutely certain that these words are not misinterpreted to

the disadvantage of my State or any other State.

Mr. McCARRAN. That is the object and purpose, and that is the whole idea behind the amendment.

Mr. BONE. These words may be construed absolutely to prohibit force-account work wherever it is possible to let contracts. Is that the Senator's intention?

Mr. McCARRAN. That is the object.

Mr. GLASS. No; wherever it is practicable.

Mr. McCARRAN. Wherever practicable.

Mr. BONE. Very well, so long as we understand that. We desire to know what we are doing when we vote "yes" or "no."

The VICE PRESIDENT. The question is on agreeing to the committee amendment known as "section 7."

The amendment was agreed to.

2

INTERPRETATION OF THE WORDS "WORK UNDER EACH PARTICULAR PROJECT" IN THE 1935 ACT

While the conference report of March 28, 1935, on House Joint Resolution 117 (which was later enacted into law as the Emergency Relief Appropriation Act of 1935), was pending before the Senate, there was considerable discussion of the meaning of the words "direct work" which appear in subsection (g) of section 1 thereof, said section then reading as follows:

> (g) Loans or grants, or both, for projects of States, Territories, possessions, including subdivisions and agencies thereof, and self-liquidating projects of public bodies thereof, municipalities, and the District of Columbia; where not less than one-third

of the loan or the grant or the aggregate thereof is for expenditures for direct work, $900,000,000;

The position of Senator Glass, Chairman of the Senate Appropriations Committee and one of the managers on the part of the Senate in the conference, as to the meaning of these words, is indicated by the following colloquy between him and Senator Copeland on the floor of the Senate, which appears in the Congressional Record (79 Cong. Rec., 4746):

> Mr. GLASS. Mr. President, section 3 of the joint resolution, as it went to conference, was wholly an insertion by the Senate itself; no word of it was in the joint resolution as passed by the House; but the House conferees undertook to alter that provision of the joint resolution in various respects, and, with the assent of the Senate conferees, succeeded in doing so.
>
> At the last, having their attention drawn to the fact that under the section as it stood the entire amount of $900,000,000, with such addition as the President might please to make to the amount, in his discretion, under the 20 percent permission, might be expended without employing a single human being in addition to those already now employed, the Senate conferees undertook to write into the provision a requirement that this money should not be loaned to States, municipalities, and subdivisions of States or the District of Columbia unless the project for which the money was loaned involved the expenditure of one-third of the amount for labor.
>
> As I stated in my letter to the Secretary, he has fallen into the error, which has been spread broadcast in the Washington newspapers, of asserting that the measure re-

quires that one-third of the labor shall be done on the site of the project. There is not a word or sentence in the report of the conferees which justifies any such assumption. On the contrary, the conferees took the view that any work entering into a given project for which any part of the $900,000,000 should be loaned should be counted in estimating the one-third required to be expended on direct labor.

In order to make sure that that was a correct interpretation of the provision, the conferees asked the Comptroller General to come before them, to examine the provision, and to give his interpretation of it. He told us that the interpretation of the Senate conferees was his interpretation and that he should feel obliged so to rule in any matter that might come before him for decision.

Mr. COPELAND. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Virginia yield to the Senator from New York?

Mr. GLASS. Certainly.

Mr. COPELAND. The Senator from Virginia might state also that, while it was proposed by someone in the conference that the language should be further restricted to require one-third of the work to be done at the site, the proposal was overwhelmingly "thrown out of the window."

Mr. GLASS. Yes. To show that the Senate conferees had not in mind in the text of their report or in the spirit of it to require that the one-third of the direct work should apply to the site of the project, that proposal was made and almost unanimously rejected by the conferees. The purpose of the conferees was to require that when any part of the $900,000,000, plus whatever might be

added to it, should be loaned to a State or community or subdivision of a State for a project, the project must involve enough work to consume one-third of the loan.

As I stated in my letter to the Secretary, for example, if a waterworks plant should be erected out of money loaned from the $900,000,000, not only must the work on the site make up a part of the one-third expenditure, but all the work on a motor be manufactured a thousand miles away or on other machinery manufactured far away, and all work involved in the transportation and the handling of the machinery that related itself to the particular project for which the amount should be loaned would be counted.

Because of the uncertainty as to the meaning of the words "direct work", the bill was sent back to conference. In conference subsection (g) of section 1 was changed to read as it now does, and Congressman Buchanan, Chairman of the House Appropriations Committee, and one of the managers on the part of the House in such conference, made the following official statement on the floor of the House as to the meaning of the words "work under each particular project" (79 Cong. Rec. 5145):

The expression "work under each particular project" includes not only work done at the site of the project but work which may properly be called "indirect" work, for example, the work which is created by the manufacturer and production of materials and in the transportation of such materials to the site of the project.

THE PROVISION RELATING TO THE PUBLIC WORKS ADMINISTRATION CONTAINED IN THE FIRST DEFICIENCY APPROPRIATION ACT, FISCAL YEAR 1936; DEBATES THEREON; AND STATEMENT BY THE CHAIRMAN OF THE HOUSE COMMITTEE ON APPROPRIATIONS IN EXPLANATION OF THE PROVISION

The following provision relating to the Public Works Administration is contained in Title II of the First Deficiency Appropriation Act, fiscal year 1936, and is the basis of the contemplated public works program:

> In order to increase employment by providing for useful public-works projects of the kind and character for which the Federal Emergency Administrator of Public Works (hereinafter called the Administrator) has heretofore made loans or grants pursuant to title II of the National Industrial Recovery Act or the Emergency Relief Appropriation Act of 1935, the Administrator may, upon the direction of the President, use not to exceed $300,000,000 from funds on hand or to be received from the sale of securities, for the making of grants to aid in the financing of such projects: *Provided,* That no part of the sum made available by this paragraph shall be granted for any project unless, in the determination of the Administrator, the completion thereof can be substantially accomplished prior to July 1, 1938, and adequate provision has been made or is assured for financing such part of the entire cost thereof as is not to be supplied through the Federal Emergency Administration of Public Works: *Provided further,* That this limitation upon time shall

not apply to any project enjoined in any Federal or State court: *Provided further,* That in no case shall the amount of the grant exceed 45 percent of the cost of the project. Nothing herein shall be construed to increase the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized and empowered under existing law to issue and to have outstanding at any one time, and nothing herein shall be construed to limit or curtail in any way any powers which the Federal Emergency Administration of Public Works or the Administrator is now authorized to exercise.

Originally the bill contained a proviso that money should not be granted if the project could not be completed prior to July 1, 1937. That was amended to extend the period to July 1, 1938. Subsequently there was inserted the proviso that the limitation upon time should not apply to any project enjoined in any federal or state court. The following debates in the Senate with reference to those amendments show that there was clearly in mind competing municipal electric power projects:

Mr. NORRIS. Let me suggest to the Senator from Kentucky, when he modifies his amendment by inserting "1938" instead of "1937," that many of the projects are now held up by injunctions which are pending. As to some of them the injunctions will not be disposed of in time to enable them to avail themselves of the grant.

Mr. BARKLEY. I have in mind a city whose council called an election to vote bonds to comply with the requirements of the Government in order to build a waterworks plant. An injunction was obtained against

the election, and the election has not as yet been held because the case has not been decided. Certainly another year is not too much to ask in behalf of the community restricted in such a way.

Mr. Norris. I have in mind the case of Jacksonville, Ill. Bonds were voted after full discussion of the matter before the people, but in that case it was a question of constructing a municipal electric-light plant. The power interests obtained an injunction after the bonds had been voted (80 Cong. Rec. 8491.)

Mr. McKELLAR. Mr. President, immediately after the date "1938," I propose to insert the following:

"*Provided,* That this limitation shall not apply to any project that has been enjoined in any Federal or State court."

The reason for offering this limitation is that many injunctions have already been granted, and it would be unfair and unjust to deprive the particular communities where that has been done from receiving this relief.

The PRESIDING OFFICER. The Senator from Tennessee offers an amendment to come at the end of the amendment offered by the Senator from Colorado, which will be stated.

The CHIEF CLERK. It is proposed to insert the following after the amendment to the amendment just agreed to:

"*Provided,* That this limitation shall not apply to any project that has been enjoined in any Federal or State Court."

Mr. BORAH. Mr. President, what is the effect of the amendment?

Mr. McKellar. I will give an illustration. The city of Knoxville, Tenn., applied for a loan and a grant to build an electric light plant, and they were enjoined by a private company. If the limitation as carried in the bill shall continue in force—and it will be in force, of course, unless

the injunction is dissolved in time enough to permit them to build the plant—they cannot build the plant at all. It might be held up on appeal, so that Knoxville would be deprived entirely of the relief.

Mr. Glass. Has the plant been let to contract?

Mr. McKellar. No, the plant has not been let to contract; before that could be done, the injunction was issued. There are a number of such cases, and it seems to be manifestly fair and just that the limitation should not apply to cases of that kind.

Mr. BARKLEY Mr. President, the amendment simply limits the expiration of the time?

Mr. MCKELLAR. That is all. I ask for a vote on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Tennessee to the amendment of the committee.

The amendment to the amendment was agreed to. [Cong. Rec. 8499–8500.]

The following statement was submitted by the Chairman of the House Committee on Appropriations and read into the record by the Clerk of the House in explanation of the above-quoted provision relating to the Public Works Administration for the purpose of declaring the intention of the Congress in enacting such provision (Congressional Record, June 17, 1936, House of Representatives, page 9889) (80 Cong. Rec. 9791):

RE FIRST DEFICIENCY APPROPRIATION BILL, FISCAL YEAR 1936, INSOFAR AS IT RELATES TO THE PUBLIC WORKS ADMINISTRATION

The bill as it passed the House of Representatives contained no provision concerning the Public Works Administration. The Senate added a paragraph which authorized

the Federal Emergency Administrator of Public Works, upon the direction of the President, to use not to exceed $300,000,000 from funds on hand, or to be received from the sale of securities, for the making of grants to aid in the financing of projects capable of being substantially completed, in the determination of the Administrator, not later than June 30, 1938. The amount of grant which could be made for any project was limited to 45 percent.

The purpose of this provision is to permit the Federal Emergency Administrator of Public Works to use the cash and credits now in the Public Works Administration revolving fund for an additional public-works program to supplement the work-relief program to be carried on. Since, under existing law, the moneys in the Public Works Administration revolving fund are available only for loans, for the past year the Public Works Administration has been making loans from this revolving fund and grants from rescinded allotments made from the appropriations to carry out title II of the National Industrial Recovery Act and from the $345,000,000 allocated to the Public Works Administration by the President from the $4,880,000,000 appropriated to carry out the Emergency Relief Appropriation Act of 1935.

The provision added by the Senate is not intended to disturb the use of the revolving fund for such loans as are authorized under Public, No. 412, Seventy-third Congress, and under the Emergency Relief Appropriation Act of 1935, but it confers supplemental and additional powers upon the Administrator and does not curtail any of his present powers or functions.

The Senate amendment contemplates that the Public Works Administration will make loans for non-Federal public-works projects in the amount of 55 percent of the cost of the project out of its revolving loan fund and will supply the remaining 45 percent as an outright grant. In cases where applicants are able to provide their share of the cost of the projects from the sale of municipal bonds on the open market, only a grant will be made by the Public Works Administration.

The first change which the conferees have made to the Senate amendment has been the deletion in the first and second lines of superfluous language relative to relief and work relief so as to make perfectly clear that the purpose of the paragraph is to enable the Public Works Administration to follow a well-beaten path by providing aid in financing a non-Federal public-work program. This provision in the Senate amendment is also intended to serve as a standard for guiding the Administrator in the selection of types of projects to be financed under the amendment.

Another change made by the conferees in the Senate amendment has been to rephrase the limitation on the time within which it is estimated that a project will be completed in order that it may be eligible for a grant under the bill. The purpose of this change is to make clear that no part of the funds made available by this paragraph shall be granted for any project unless the Administrator has determined that the completion of the project can be substantially accomplished, in his opinion, prior to July 1, 1938, and also to prohibit the use of any funds

under this paragraph to finance any project unless, in the judgment of the Administrator, the applicant has on hand or is able to furnish satisfactory assurances that it will provide its share of the cost of the project.

It is expected that under this provision the Public Works Administration will be enabled to carry on a $600,000,000 non-Federal Public Works program. It is contemplated that this will be done by the Public Works Administration agreeing to make grants and loans from its unobligated funds on hand and against commitments from the Reconstruction Finance Corporation. The Public Works Administration will be able to enter into a contract to make a grant or to purchase municipal bonds in reliance upon a commitment by the Reconstruction Finance Corporation to purchase bonds from the Public Works Administration in a like amount.

Under existing law the only limitation is the limitation upon the amount of bonds purchased from the Public Works Administration which the Reconstruction Finance Corporation may hold at any one time. This amount is limited to $250,000,000 by Public, No. 412, Seventy-third Congress. It is anticipated that through the cooperation of the Reconstruction Finance Corporation it will be possible for the Public Works Administration to use from its revolving fund the $300,000,000 made available under this paragraph of the bill for grants and an additional amount of about $150,000,000 for loans, but the Senate amendment does not in any way restrict the present power of the Public Works Administration to resell on the open market bonds it has purchased.

To summarize: Under the Senate amendment, as modified by the conferees, the President is given power to authorize and direct the Federal Emergency Administrator of Public Works to use $300,000,000 from the revolving fund for the making of grants for projects selected by the Administrator, and to use funds on hand and funds to be received from the resale of bonds for the making of loans for such projects. It is anticipated that the Administrator will be empowered to make these grants and loans subject to such terms and conditions as he may prescribe in order to carry out the purposes of the Senate amendment. The Administrator will, of course, continue to exercise the functions which he has been heretofore authorized to perform under title II of the National Industrial Recovery Act and under the Emergency Relief Appropriation Act of 1935.

4

INCLUSION OF GENERATING PLANTS AND DISTRIBUTION SYSTEMS WITHIN THE MEANING OF TITLE II OF THE NATIONAL INDUSTRIAL RECOVERY ACT

During the discussion of the conference report on the National Industrial Recovery Act on the floor of the Senate, the following colloquy took place between Senator Norris and Senators Harrison (Chairman of the Senate Finance Commitee) and Wagner (who was one of the Senate Conferees). Congressional Record, Volume 77, part 6, pages 5853–5854.

The Senate resumed the consideration of the report of the committee of conference on

the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5755) to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

Mr. NORRIS. Mr. President, in the brief time which I shall occupy the floor I want first to call attention to an amendment agreed to in the Senate and which has gone out in conference. It is amendment numbered 44, found on page 19. The bill provided, in subsection (b) of section 202, as follows:

"(b) Conservation and development of natural resources, including control, utilization, and purification of water, construction of sewage-disposal plants, widening of streets, prevention of sewers and soil or coastal erosion, development of water power, transmission generation, transmission, and distribution of electrical energy."

An amendment was inserted on the floor of the Senate to add after the word "transmission" the words "generation and distribution." I supposed, when that addition was made, that there could be no possible objection to including those words. I do not yet see how anyone who would be willing to put in the word "transmission" would not also agree to having inserted the words "generation and distribution."

Mr. HARRISON. Mr. President——

The PRESIDING OFFICER (Mr. Barkley in the chair). Does the Senator from Nebraska yield to the Senator from Mississippi?

Mr. NORRIS. I yield.

Mr. HARRISON. I was in entire sympathy with the amendment offered by the Senator,

and tried to retain it as it was written in the bill, but the conference was told that that was included in the other provisions of the bill; that there was not the slightest doubt about the generation and distribution, as well as transmission, being taken care of under the general provisions of the bill.

Mr. NORRIS. Mr. President, of course, I accept the Senator's statement at 100 percent, but, as a matter of fact, while I think the position taken by the Senator's informant as to generation being included by construction may be tenable, there is absolute certainty, it seems to me, that distribution will be omitted from the terms of the bill. In the electrical world there are two distinct things that happen as to the electricity which is generated; first, there is the transmission; then there is the distribution. It is generally understood, so far as I know, without exception, by engineers that transmission does not include distribution. Transmission means the carrying of electricity from the place where it is generated to the place where it is distributed. That is transmission. For instance, if electricity were generated at Great Falls, and the electricity were brought to the city of Washington, the bringing of the electricity to the city would be transmission, but when it was furnished to the people within the city that would be distribution and would not be included in the term "transmission"; so that, as it now stands, I do not believe there would be any authority for a municipality which wished to distribute electricity to its own citizens to come under the terms of the bill.

Mr. HARRISON. May I say to the Senator that we inquired specifically of General Johnson, who was present, as to that, and he

said there was no question about it. That was the only reason why the word was stricken out. May I say to the Senator also that I was for including it in the bill because it was so plain.

Mr. NORRIS. I talked the matter over with the Senator from New York before I offered the amendment. It then had his full concurrence, and I have no doubt the Senator yet entertains the same view.

Mr. WAGNER. I will say to the Senator that I think the term should have remained in the bill as the Senator proposed it; but, after all, under a general provision of the bill I am sure any public project of a municipality, State, or any other political subdivision is included, and as the bill now stands there is certainly authority for the loan of money for the purpose of building transmission lines such as the Senator has in mind.

Mr. NORRIS. The building of a transmission line is an entirely different proposition from the building of a distribution line.

Mr. WAGNER. I mean there is ample authority also for the building of a distribution line. I refer to section 202.

Mr. GEORGE. May I call the Senator's attention to the language in section 202?

Mr. NORRIS. I yield to the Senator from Georgia.

Mr. GEORGE. In section 202, line 5, after describing public works, the language is:

"And any publicly owned instrumentalities and facilities."

Mr. NORRIS. Where is that language found?

Mr. WAGNER. That is the section I wanted to call the Senator's attention to.

Mr. GEORGE. It is section 202 of the bill, page 19, line 5.

Mr. NORRIS. The language of the bill, beginning in line 2, page 19, is as follows:

"(a) Construction, repair, and improvement of public highways and parkways, public buildings (including the remodeling of buildings hereby authorized to be purchased for Federal purposes), and any publicly owned instrumentalities and facilities."

Mr. WAGNER. I think that language covers it.

Mr. NORRIS. I do not believe that includes the distribution of electrical energy; and, Mr. President, even if it did, we should thereby lay the way open for an injunction, to start with, by privately owned power companies. I do not see any escape from it. Why not add the word "distribution"? "Transmission" is already in the bill. Why include transmission if it is already included under the general terms of the bill? And, if transmission be included, why not permit the electricity to be distributed after it has been transmitted?

Mr. WAGNER. Of course, my opinion always has been that these special provisions were unnecessary, in view of the general provision to which the Senator's attention has been called.

Mr. NORRIS. If the general provision applies, Mr. President, then none of this language should have been put in. It was put in by the other House; it was in the bill when it came to us, so far as transmission was concerned; and yet, if the Senator's theory is correct, it was already in in lines 5 and 6, and specific inclusion was absolutely unnecessary. The very fact that the word "transmission" was inserted and the word "distribution" was omitted, it seems to me when it comes to construing the proposed

act will be assigned as a reason to show that "distribution" was intentionally omitted.

Mr. WAGNER. Of course, I do not know what was in the minds of the conferees when the word was omitted, but I will say, as one who had a good deal to do with the legislation, that, so far as I am concerned, I feel very certain—and I do not see how any court or anyone construing the act can reach any other conclusion—that under the general terms "publicly owned instrumentalities and facilities" transmission and distribution lines are adequately covered.

U. S. GOVERNMENT PRINTING OFFICE: 1937

SUPREME COURT OF THE UNITED STATES.

Nos. 84, 85.—October Term, 1937.

Alabama Power Company, Petitioner,
84 *vs.*
Harold L. Ickes, as Federal Emergency Administrator of Public Works, et al.

Alabama Power Company, Petitioner,
85 *vs.*
Harold L. Ickes, as Federal Emergency Administrator of Public Works, et al.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[January 3, 1938.]

Mr. Justice Sutherland delivered the opinion of the Court.

These cases involve certain "loan-and-grant agreements" made by the Federal Emergency Administrator of Public Works with four municipal corporations located in the State of Alabama. The bills of complaint sought to enjoin the execution of these agreements. Each agreement contemplates the construction of an electricity-distribution system by the designated municipality, and, to that end, the purchase, by the Administrator, of bonds to be issued by the municipality and secured by a first pledge of the revenues derived from the operation of the system. In No. 84 thirty and in No. 85 forty-five per cent. of the cost of the labor and materials used in the construction are to be donated outright. The authority relied upon for the loans and grants is that contained in Title II of the National Industrial Recovery Act[1] as modified and continued by the Emergency Relief Appropriation Act of 1935.[2] Title I of the former act has been declared unconstitutional by this court. *Schechter Corp.* v. *United States*, 295 U. S. 495; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388. But we are here concerned not with Title I but with Title II of the act. So far as material, that title provides:

"Sec. 202. The Administrator, under the direction of the President, shall prepare a comprehensive program of public works,

[1] C. 90, 48 Stat. 195, 200.
[2] C. 48, 49 Stat. 115, 119.

which shall include among other things the following: (a) Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, . . . ; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than those included in the foregoing classes) of any character heretofore eligible for loans under subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, . . .

"Sec. 203. (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public-works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 [by later act 45] per centum of the cost of the labor and materials employed upon such project; . . ."

The bills of complaint challenge the validity of the loans and grants on the grounds, among others, that these statutory provisions purporting to authorize such loans and grants are unconstitutional; and that, in any event, the loans and grants do not come within the statutory provisions.

The injury which petitioner will suffer, it is contended, is the loss of its business as a result of the use of the loans and grants by the municipalities in setting up and maintaining rival and competing plants; a result, it is further contended, which will be directly caused by the unlawful act of the administrator in making and consummating the loan-and-grant agreements.

The suits were brought in the United States District Court for the District of Columbia. There, the respondents, in addition to defending the validity of the action of the administrator, con-

tended that petitioner was without legal standing to maintain the suits. After a full hearing, the district court held that petitioner had standing to challenge the administrator's action, but denied the injunctions and dismissed the bills of complaint upon the view that the statutory provisions were constitutional and that they conferred upon the administrator the power which he had exercised.

On appeal to the United States Court of Appeals for the District of Columbia, that court found it unnecessary to consider the validity of the loans and grants, and affirmed the decrees of the district court dismissing the bills on the ground that no legal or equitable right of the power company had been invaded, and the company, therefore, was without standing to challenge the validity of the administrator's acts. 91 F. (2d) 303. With that view we agree, and confine our consideration of the cases accordingly.

The trial court made elaborate findings, but for present purposes the following is all that need be stated. Petitioner is a corporation organized under the laws of Alabama, having its principal office and corporate domicile in that state. Respondent Ickes is the Administrator of the Federal Emergency Administration of Public Works, duly appointed by the President of the United States in pursuance of law. The other respondents are subordinate officers and agents of the same Emergency Administration, or officers connected with its operations.

Petitioner, under its charter, has the right to manufacture, supply and sell electrical energy throughout the State of Alabama. Among other communities served by its system are the four municipalities here involved, from each of which it has a non-exclusive franchise giving it the right to construct, maintain and operate within the municipality an electricity-distribution system. Petitioner is a taxpayer of each of the municipalities, of the counties in which they are located, and of the state, with respect to petitioner's properties and operations; and it also is a taxpayer of the United States with respect thereto.

Each of the municipalities is authorized under state law to construct and operate municipal electric plants and distribution systems, and to engage in competition with petitioner. Each is authorized to issue bonds for the purpose of financing the construction of such plants and to receive grants for that purpose; to mortgage its plant or any part of it and to pledge all or any part of the revenues derived from the operation of the plant as security for

the loan.[3] In each municipality an election was held prior to the making of the loan agreements, at which it was determined by a majority of the qualified voters that the municipality should engage in the electric business. The district court further found—

"Each of the municipalities involved in this suit determined to enter into the electric distribution business of its own free will. There was no solicitation or coercion on the part of any of the defendants [respondents], their agents or subordinates. There was and is no conspiracy between any of the defendants and any other person, nor is there any other effort on the part of any of the defendants to, nor are their actions motivated by a desire to, cause injury or financial loss to the plaintiffs, or to regulate their rates or electric rates generally, or to foster municipal ownership of utilities.

"The expenditures under these statutes involve no purchase of, nor contract providing for, regulation by the United States. The failure of any city to apply for or receive loans or grants under those statutes will impose upon it no disadvantage or financial loss.

"The defendants have not reserved any right or power to influence or control rates to be charged by the proposed municipal power plants. . . .

"Neither the United States nor any of the defendants has reserved any right or power under the existing contracts, or in any other way, to require any of the municipalities to eliminate competition or to designate the person or agency from whom the municipality must purchase its power. . . .

"Neither the United States nor any of the defendants has any power to control the operation of the projects after construction is completed. . . .

"Each of the projects herein involved is a part of a program of national scope, is designed to relieve unemployment, and promotes the general welfare of the United States."

These findings were made, after hearing, by the district judge upon undisputed or conflicting evidence. The findings were not questioned by the court below; and since they are not without substantial support in the evidence, we accept them here as unassailable. *Davis* v. *Schwartz*, 155 U. S. 631, 636-637; *Adamson* v. *Gilliland*, 242 U. S. 350, 353.

It, therefore, appears that each of the municipalities in question has authority to construct and operate its proposed plant and dis-

[3] See Oppenheim v. City of Florence, 229 Ala. 50.

tribution system in competition with petitioner, and to borrow money, issue bonds and receive grants for that purpose; that it determined to do so of its own free will, without solicitation or coercion; that there was no conspiracy between any of the respondents and any other person, or any effort or action motivated by a desire to cause injury or financial loss to petitioner, or any purpose to regulate rates or foster municipal ownership of utilities. It further appears that neither the United States nor any of the respondents has reserved any right or power to require an elimination of competition or designate any agency from which the municipality must purchase its power. Each municipality is left entirely free from federal control or direction in respect of the management and control of its plant and business. In short, the case for petitioner comes down to the contention that consummation of the loan-and-grant agreements should be enjoined on the sole and detached ground that the administrator lacks constitutional and statutory authority to make them, and that the resulting moneys, which the municipalities have clear authority to take, will be used by the municipalities in lawful, albeit destructive, competition with petitioner

First. Unless a different conclusion is required from the mere fact that petitioner will sustain financial loss by reason of the lawful competition which will result from the use by the municipalities of the proposed loans and grants, it is clear that petitioner has no such interest and will sustain no such legal injury as enables it to maintain the present suits. Petitioner alleges that it is a taxpayer; but the interest of a taxpayer in the moneys of the federal treasury furnishes no basis for an appeal to the preventive powers of a court of equity. *Massachusetts* v. *Mellon*, 262 U. S. 447, 486 *et seq.* The principle established by the case just cited is that the courts have no power to consider in isolation and annul an act of Congress on the ground that it is unconstitutional; but may consider that question "only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." The term "direct injury" is there used in its legal sense, as meaning a wrong which directly results in the violation of a legal right. "An injury, legally speaking, consists of a wrong done to a person, or, in other words, a violation of his right. It is an ancient maxim, that a damage to one, without an injury in this sense, (*damnum absque injuria*,) does not

lay the foundation of an action; because, if the act complained of does not violate any of his legal rights, it is obvious, that he has no cause to complain. . . . Want of right and want of remedy are justly said to be reciprocal. Where therefore there has been a violation of a right, the person injured is entitled to an action." *Parker* v. *Griswold*, 17 Conn. 288, 302-303. The converse is equally true, that where, although there is damage, there is no violation of a right no action can be maintained.

Second. The only pertinent inquiry, then, is what enforcible legal right of petitioner do the alleged wrongful agreements invade or threaten? If conspiracy or fraud or malice or coercion were involved a different case would be presented, but in their absence, plainly enough, the *mere* consummation of the loans and grants will not constitute an actionable wrong. Nor will the subsequent application by the municipalities of the moneys derived therefrom give rise to an actionable wrong, since such application, being lawful, will invade no legal right of petitioner. The claim that petitioner will be injured, perhaps ruined, by the competition of the municipalities brought about by the use of the moneys, therefore, presents a clear case of *damnum absque injuria.* Stated in other words, these municipalities have the right under state law to engage in the business in competition with petitioner, since it has been given no exclusive franchise. If its business be curtailed or destroyed by the operations of the municipalities, it will be by lawful competition from which no legal wrong results.

What petitioner anticipates, we emphasize, is damage to something it does not possess—namely, a right to be immune from lawful municipal competition. No other claim of right is involved. It is, in principle, as though an unauthorized loan were about to be made to enable the borrower to purchase a piece of property in respect of which he had a right, equally with a prospective complainant, to become the buyer. While the loan might frustrate complainant's hopes of a profitable investment, it would not violate any legal right; and he would have no standing to ask the aid of a court to stop the loan. What difference, in real substance, is there between the case supposed and the one in hand?

The ultimate question which, therefore, emerges is one of great breadth. Can anyone who will suffer injurious consequences from the lawful use of money about to be unlawfully loaned maintain a suit to enjoin the loan? An affirmative answer would produce novel and startling results. And that question suggests another: Should

the loan be consummated, may such a one sue for damages? If so, upon what ground may he sue either the person making the loan or the person receiving it? Considered apart, the lender owes the sufferer no enforcible duty to refrain from making the unauthorized loan; and the borrower owes him no obligation to refrain from using the proceeds in any lawful way the borrower may choose. If such a suit can be maintained, similar suits by innumerable persons are likewise admissible to determine whether money is being loaned without lawful authority for uses which, although hurtful to the complainants, are perfectly lawful. The supposition opens a vista of litigation hitherto unrevealed.

John Doe, let us suppose, is engaged in operating a grocery store. Richard Roe, desiring to open a rival and competing establishment, seeks a loan from a manufacturing concern which, under its charter, is without authority to make the loan. The loan, if made, will be *ultra vires*. The state or a stockholder of the corporation, perhaps a creditor in some circumstances, may, upon that ground, enjoin the loan. But may it be enjoined at the suit of John Doe, a stranger to the corporation, because the lawful use of the money will prove injurious to him and this result is foreseen and expected both by the lender and the borrower, Richard Roe? Certainly not, unless we are prepared to lay down the general rule that A, who will suffer damage from the lawful act of B, and who plainly will have no case against B, may nevertheless invoke judicial aid to restrain a third party, acting without authority, from furnishing means which will enable B to do what the law permits him to do. Such a rule would be opposed to sound reason, as we have already tried to show, and cannot be accepted.

If there are conditions under which two distinct transactions, neither of which, apart, constitutes a judicially remediable wrong, may be so related to one another as to afford a basis for judicial relief, such conditions are not to be found in the circumstances of the present case.

What we have now said finds ample support in the decided cases. Among the decisions of this court, and directly in point, is *Railroad Co.* v. *Ellerman*, 105 U. S. 166. In that case, the railroad company was authorized by its charter, among other things, to obtain and afterwards manage, use and enjoy, wharves and the appurtenances thereto "in connection with its railroads." A Louisiana statute conferred upon the railroad the power to obtain and thereafter to own, maintain and use, suitable wharves, etc., "connected

with and incidental to said railroad." Pursuant to this authority, the railroad company acquired property which it used as a wharf and which, although limited by the statute and its charter to use for railroad purposes, it leased to certain persons for the mooring of vessels and the loading and unloading of cargoes upon and from all vessels of a kind designated. Ellerman operated certain public wharves under a contract with the city of New Orleans giving him the right to collect revenues derived therefrom. He brought suit to enjoin the execution of the lease of the railroad wharf. This court held that he was without legal standing to maintain the suit —his only interest being to prevent competition with himself as a wharfinger, which the more extensive and challenged use by the lessees of the railroad wharf would create, and his claim for relief resting only upon the allegation that the use proposed by the lease was beyond the corporate power of the railroad company to grant. "But if the competition in itself, however injurious," we said, pp. 173-174, "is not a wrong of which he could complain against a natural person, being the riparian proprietor, how does it become so merely because the author of it is a corporation acting *ultra vires?* The damage is attributable to the competition, and to that alone. But the competition is not illegal. It is not unlawful for any one to compete with the company, although the latter may not be authorized to engage in the same business. The legal interest which qualifies a complainant other than the State itself to sue in such a case is a pecuniary interest in preventing the defendant from doing an act where the injury alleged flows from its quality and character as a breach of some legal or equitable duty. A stockholder of the company has such an interest in restraining it within the limits of the enterprise for which it was formed, because that is to enforce his contract of membership. The State has a legal interest in preventing the usurpation and perversion of its franchises, because it is a trustee of its powers for uses strictly public. In these questions the appellee has no interest, and he cannot raise them in order, under that cover, to create and protect a monopoly which the law does not give him. The only injury of which he can be heard in a judicial tribunal to complain is the invasion of some legal or equitable right. If he asserts that the competition of the railroad company damages him, the answer is, that it does not abridge or impair any such right. If he alleges that the railroad company is acting beyond the warrant of the law, the

answer is, that a violation of its charter does not of itself injuriously affect any of his rights. The company is not shown to owe him any duty which it has not performed." Supporting cases are cited. See, also, *United States* v. *Dern*, 68 F. (2d) 773. Compare *Edward Hines Trustees* v. *United States*, 263 U. S. 143, 148; *Sprunt & Son* v. *United States*, 281 U. S. 249, 256-257; *Milwaukee Horse & Cow Comm. Co.* v. *Hill*, 207 Wis. 420, 423, 430-432.

The *Chicago Junction Case*, 264 U. S. 258, is not to the contrary. There, suit was brought by certain railroad companies to set aside an order of the Interstate Commerce Commission authorizing a competing company to acquire a terminal road. Answering the contention that complainants were without the legal interest necessary to entitle them to challenge the order, this court held that the right to sue arose in virtue of a special interest recognized by certain provisions contained in Transportation Act, 1920, and under § 212 of the Judicial Code which gave any party to a proceeding before the commission the right to become a party to any suit wherein the validity of an order made in the proceeding is involved. In this view, the *Ellerman* case was thought to be inapplicable. A reading of the case in connection with the dissenting opinion shows very clearly that, but for express statutory provision creating a different rule, the decision in the *Ellerman* case would have been controlling.

The precise question here involved was decided, in accordance with the view we have expressed, in *Duke Power Co.* v. *Greenwood County*, 91 F. (2d) 665, 676; same case, 81 F. (2d) 986, 997. Compare *Arkansas-Missouri Power Co.* v. *City of Kennett, Mo.*, 78 F. (2d) 911. See, also, *City of Allegan* v. *Consumers' Power Co.*, 71 F. (2d) 477. The *Greenwood County* case, *supra*, is now pending in this court upon certiorari, and will be determined upon the authority of our present decision.

Frost v. *Corporation Commission*, 278 U. S. 515, relied upon by petitioner, presents an altogether different situation. Appellant there owned a cotton-ginning business in the city of Durant, Oklahoma, for the operation of which he had a license from the corporation commission. The law of Oklahoma provided that no gin should be operated without a license from the commission, which could be obtained only upon specified conditions. We held that such a license was a franchise constituting a property right within the protection of the Fourteenth Amendment; and that while the acquisition of the franchise did not preclude the state from making

similar valid grants to others, it was exclusive against an attempt to operate a competing gin without a permit or under a void permit. The Durant Co-operative Gin Company sought to obtain a permit from the commission which, for reasons stated in our opinion, we held would be void and a clear invasion of Frost's property rights. We concluded that a legal right of Frost to be free from such competition would be invaded by one not having a valid franchise to compete, and sustained Frost's right to an injunction against the commission and the Durant company. See *Corporation Commission* v. *Lowe*, 281 U. S. 431, 435. The difference between the *Frost* case and this is fundamental; for the competition contemplated there was unlawful while that of the municipalities contemplated here is entirely lawful.

We deem it unnecessary to review the many other cases cited by petitioner where suits against officials have been sustained. An examination of them will disclose the presence of fraud, coercion, malice, conspiracy, or some other element or condition of controlling force—none of which, as shown by the findings which we have accepted as unassailable, exists in the present case.

Decrees affirmed.

Mr. Justice BLACK concurs in the result.

A true copy.

Test:

Clerk, Supreme Court, U. S.